INTERNAL REVENUE SERVICE PROCEDURES AND OPERATIONS IN ARIZONA

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

SECOND SESSION

SPECIAL HEARING

Department of the Treasury
Nondepartmental Witnesses

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WEDNESDAY, JUNE 2, 1982

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INTERNAL REVENUE SERVICE PROCEDURES AND OPERATIONS IN ARIZONA

WEDNESDAY, JUNE 2, 1982

U.S. SENATE,
SUBCOMMITTEE ON TREASURY, POSTAL SERVICE,
AND GENERAL GOVERNMENT,
COMMITTEE ON APPROPRIATIONS,
Tucson, Ariz.

The subcommittee met at 9 a.m., in room 146, University of Arizona Law College, Tucson, Ariz., Hon. Dennis DeConcini, presiding.
Present: Senator DeConcini

DEPARTMENT OF THE TREASURY

INTERNAL REVENUE SERVICE

STATEMENT OF ROSCOE L. EGGER, JR., COMMISSIONER

ACCOMPANIED BY:

PRESCOTT BERRY, DISTRICT DIRECTOR, ARIZONA

THOMAS CARDOZA, REGIONAL COMMISSIONER FOR WESTERN REGION

KAY KROGUE, PROBLEM RESOLUTION OFFICE, PHOENIX, ARIZ.

SUBCOMMITTEE PROCEDURE

Senator DECONCINI. We're ready to commence, if we could have order, please.

The subcommittee will come to order.

I want to thank the chairman of the Appropriations Committee, Senator Hatfield of Oregon, and Senator Abdnor of South Dakota for allowing me to hold these hearings here in Arizona. Ladies and gentlemen, this morning we begin the first of two field oversight hearings to examine the activities of the Internal Revenue Service in the State of Arizona; to assess the potential effect of the IRS budget for 1983 on Arizona taxpayers, and most importantly to hear from my fellow Arizonans on both their professional and personal experiences with the IRS in this State. This hearing is an official hearing of the Senate Appropriations Subcommitte on Treasury, Postal Service, and General Government, of which I am the ranking minority member. I'm hoping that these field hearings will provide me with good information about the Internal Revenue Service performance in Arizona, so that I can return to Washington and make decisions about the fiscal years 1982 and 1983 budg-

ets, with the particular interests and concerns of the citizens of Arizona foremost in my mind.

INTRODUCTION OF WITNESSES

We're delighted to have with us in Tucson, the Commissioner of the Internal Revenue Service, the Honorable Roscoe Egger, Jr. Thank you, Mr. Egger for being with us.

We also are pleased to have with us the Internal Revenue Service District Director in Phoenix, Mr. Prescott Berry. Mr. Berry, we appreciate your being here with us, also. And Mr. Thomas Cardoza, IRS Regional Commissioner from San Francisco. We thank you so much for being here. And I didn't get your name, I'm sorry.

Ms. KROGUE. Kay Krogue, Problem Resolution Office; in Phoenix.

Senator DECONCINI. And we're very pleased to have you with us. We welcome all of you, and thank you for taking the time in your busy schedules to testify and answer some questions today.

AREAS OF CONCERN

We have a number of public witnesses who have also taken time out of their busy schedules to come forward and tell us about their experiences with the Internal Revenue Service, and we welcome them at these hearings as well. They will present their testimony in the second half of this morning's hearing.

Commissioner, I'd like to spend the first half of this morning's hearing focusing on three major areas of concern to me and the committee: The fiscal 1983 budget of the Internal Revenue Service, and what effect it will have on taxpayers and Internal Revenue Service services in the State of Arizona.

Second, what specific action the IRS is taking to address the problem of collecting overdue taxes, the so-called underground economy, and other law enforcement initiatives Internal Revenue Service may be taking here and around the country, over the next 12 to 18 months.

Third, the problem of safeguarding taxpayers' rights, and specific steps being taken to eliminate these problems and similar problems in Arizona, or any other States that we care to discuss.

Then we will proceed to the second half of this hearing to hear from our friends who have come forward to testify on a number of different Internal Revenue Service issues.

Commissioner Egger, why don't you briefly summarize your statements, then we will proceed to hear from anyone else who's on the panel, and proceed to some questions.

Mr. EGGER. Thank you, Senator.

I'd like to include my entire statement in the record.

Senator DECONCINI. Without objection, it will appear in the record in full, as all of your statements will.

[The statement follows:]

STATEMENT OF ROSCOE L. EGGER, JR.

I APPRECIATE YOUR INVITATION TO APPEAR HERE TODAY AS PART OF YOUR REVIEW OF IRS ACTIVITIES IN ARIZONA. WHILE I HAVE TRAVELLED QUITE A BIT SINCE BECOMING COMMISSIONER -- IN ORDER TO MEET THE SERVICE EXECUTIVES AND EMPLOYEES WHO DO THE VITAL, FACE-TO-FACE WORK WITH TAXPAYERS -- THIS IS MY FIRST VISIT TO OUR PHOENIX DISTRICT AND TO ARIZONA. I BELIEVE FEDERAL ADMINISTRATORS SHOULD GET AWAY FROM WASHINGTON PERIODICALLY, BOTH TO GET A NEW, CLEARER PERSPECTIVE ON ISSUES FACING THEIR AGENCIES AND TO LEARN FIRSTHAND ABOUT THE LOCAL OPERATIONS OF THEIR ORGANIZATIONS.

IN MY TESTIMONY, I WILL FOCUS ON SOME OF THE ISSUES FACING THE SERVICE ON A NATIONAL LEVEL WHICH ALSO HAVE IMPLICATIONS LOCALLY FOR THE TAXPAYERS OF ARIZONA. OUR DIRECTOR IN THE PHOENIX DISTRICT, WHICH INCLUDES ALL OF ARIZONA, PRESCOTT BERRY, IS WITH ME TO ADDRESS IN MORE DETAIL THE SPECIFIC ACTIVITIES OF OUR OFFICES HERE. HE WILL HAVE A SEPARATE STATEMENT AT THE CONCLUSION OF MINE. ALSO WITH ME TODAY IS THOMAS CARDOZA, OUR REGIONAL COMMISSIONER FOR THE WESTERN REGION.

KEY ISSUES FACING TAX ADMINISTRATION

I WOULD LIKE TO BRIEFLY REVIEW FOR YOU FOUR KEY ISSUES FACING THE SERVICE TODAY. WHILE THESE FOUR ISSUES DO NOT BEGIN TO EXHAUST THE LIST OF PROBLEM AREAS WE FACE, THEY ARE INDICATIVE OF THE SORTS OF ISSUES WHICH MUST BE DEALT WITH ON BOTH A NATIONAL AND A LOCAL LEVEL IF WE ARE TO PRESERVE A VIABLE SELF-ASSESSMENT SYSTEM OF TAX ADMINISTRATION.

1. INCREASING WORKLOAD, DECREASING RESOURCES

I AM CERTAIN THAT YOUR WORK ON OUR APPROPRIATIONS SUBCOMMITTEE HAS GIVEN YOU AMPLE OPPORTUNITY TO HEAR

THE CHARGE THAT THE AGENCY IS FACING INCREASING WORKLOADS WITH DECREASING RESOURCES. THE SERVICE IS ATTEMPTING TO DEAL WITH THIS ISSUE IN THOUGHTFUL, INNOVATIVE WAYS THAT DO NOT ALWAYS REQUIRE THE ADDITION OF NEW STAFF. IN PREPARING OUR FY 1983 BUDGET, FOR EXAMPLE, EACH MAJOR PROGRAM AND PROJECT WAS REVIEWED IN DEPTH, WITH PARTICULAR EMPHASIS ON RETHINKING THE SERVICE'S LONG-TERM STRATEGY FOR EFFECTIVE TAX ADMINISTRATION. WE HAVE INTENTIONALLY TAKEN A MULTI-YEAR APPROACH WHEREVER POSSIBLE, TO PROVIDE THE PROGRAM COMMITMENT AND CONTINUITY SO OFTEN ABSENT FROM A ONE-YEAR-AT-A-TIME APPROACH. I BELIEVE THIS BUDGET LAYS THE GROUNDWORK FOR A MORE MODERN, MORE EFFICIENT INTERNAL REVENUE SERVICE --- ONE WHICH CAN MEET THE CHALLENGES IN THE 80'S AND BEYOND.

OUR PROPOSED BUDGET FOR FISCAL YEAR 1983 PROVIDES FOR AVERAGE EMPLOYMENT OF 88,673 AND SOME $2.917 BILLION. THIS IS A NET INCREASE OF SOME 3,300 AVERAGE POSITIONS FROM THE AUTHORIZED LEVEL PROPOSED FOR FISCAL YEAR 1982. IN DOLLARS, THE FISCAL YEAR 1983 REQUEST IS SOME $328.1 MILLION MORE THAN THE PROPOSED LEVEL FOR FISCAL YEAR 1982.

ONE OF THE IMPORTANT OBJECTIVES OF THIS BUDGET IS TO MOVE THE INTERNAL REVENUE SERVICE AHEAD IN MODERNIZING ITS ADP SYSTEMS AND IMPROVING THE EFFICIENY OF OUR FIELD OFFICES. THIS WILL BE ACCOMPLISHED BY INTRODUCING NEW SYSTEMS AND PROCEDURES THAT MAKE USE OF CURRENT TECHNOLOGY. THE BUDGET INCLUDES APPROXIMATELY 300 AVERAGE POSITIONS AND $75.3 MILLION FOR THIS PURPOSE. THESE INITIATIVES ARE ESSENTIAL TO EFFECTIVE TAX ADMINISTRATION IN THE 1980's.

THE OTHER MAJOR OBJECTIVE OF THIS BUDGET IS THAT OF IMPROVING TAX ENFORCEMENT. AN EQUITABLE TAX SYSTEM

REQUIRES THAT UNREPORTED TAX BE IDENTIFIED AND ASSESSED, AND THAT UNPAID TAX BE COLLECTED. THE PROPOSED BUDGET INCLUDES SOME 5,225 AVERAGE POSITIONS AND $154 MILLION TO IMPROVE THE SERVICE'S ABILITY TO DEAL IN A FIRM AND FAIR WAY WITH PROBLEMS OF NONCOMPLIANCE. THESE PROGRAM IMPROVEMENTS ARE NECESSARY TO ASSURE THAT ALL TAXPAYERS PAY THEIR FAIR SHARE OF THE TAX BURDEN, AND TO SECURE THE REVENUES PROVIDED FOR UNDER EXISTING TAX LAW. BASED ON EXPERIENCE, THE SERVICE ESTIMATES THAT THIS INCREASED ENFORCEMENT CAPABILITY WILL RESULT IN INCREASED NET REVENUES OF APPROXIMATELY $1.9 BILLION THAT WOULD OTHERWISE NOT COME INTO THE TREASURY IN 1983.

2. New Directions in Taxpayer Service

THE BUDGET PROCESS IS NOT EASY AND REQUIRES MANY HARD CHOICES ALONG THE WAY. I BELIEVE THE FY 1983 IRS BUDGET IS A GOOD ONE, AND DOES PROVIDE THE RESOURCES THAT THE NATION'S TAX SYSTEM NEEDS. I AM AWARE THAT SOME HAVE CRITICIZED US FOR REDUCING THE LEVEL OF FUNDING FOR TAXPAYER SERVICE, BUT I BELIEVE THE FINAL DECISION WAS JUSTIFIED IN LIGHT OF THE NEED FOR FISCAL AUSTERITY WHILE RETAINING THOSE SERVICES THAT ONLY IRS CAN PROVIDE.

BASICALLY, THE REDUCTIONS HAVE BEEN EFFECTED IN OUR TOLL-FREE TELEPHONE SYSTEM, WHICH BEGINNING IN FISCAL YEAR 1983 WILL BE LIMITED TO ANSWERING TAXPAYER INQUIRIES ON THEIR ACCOUNTS, SUCH AS BILLING, REFUNDS, AND SO ON. WE WILL NO LONGER BE ABLE TO RESPOND TO SUBSTANTIVE TAX LAW QUESTIONS ON THE PHONE. THIS CUT, HOWEVER, ENABLES US TO PRESERVE MOST OF THE OTHER SERVICES TRADITIONALLY OFFERED TO TAXPAYERS.

THE SELF-HELP RETURNS PREPARATION PROGRAM WILL BE CONTINUED, AND EXPANDED BY MAKING IRS PERSONNEL MORE ACCESSIBLE AT PUBLIC LIBRARIES, SCHOOLS, AND OTHER SIMILAR LOCATIONS DURING DAYTIME AND EVENING HOURS TO SEGMENTS OF THE PUBLIC NOT SERVICED BY VOLUNTEER GROUPS. ADDITIONALLY, A VOLUNTEER INCOME TAX ASSISTANCE (VITA) TASK FORCE IS NOW MEETING AT THE NATIONAL OFFICE TO OVERSEE THE REFORMATTING OF THE VITA TRAINING MATERIALS TO REFLECT THE INCREASED EMPHASIS ON SELF-HELP. DIRECT PREPARATION OF RETURNS FOR HANDICAPPED TAXPAYERS OR OTHERS WHO DEMONSTRATE THEY ARE UNABLE TO USE SELF-HELP WILL BE CONTINUED.

TAXPAYER INFORMATION PROGRAMS WILL BE CONTINUED, AS WILL CORRESPONDENCE ASSISTANCE AND ALL TAXPAYER EDUCATION PROGRAMS EXCEPT INSTITUTES CURRENTLY CONDUCTED FOR PROFESSIONAL TAX PRACTITIONERS. INCREASED EMPHASIS WILL BE GIVEN TO THE IRS-SPONSERED VOLUNTEER TAX PROGRAMS IN ORDER TO PROVIDE FORMS PREPARATION TO GREATER NUMBERS OF ELDERLY, LOW INCOME, AND OTHER TAXPAYERS WITH SPECIAL NEEDS. WE ARE ALSO CONSIDERING AN EXPANSION TO ALL IRS DISTRICT OFFICES AND LARGE POSTS-OF-DUTY OF THE FEDERAL TELE-TAX INFORMATION SERVICE, WHICH IS CURRENTLY BEING TESTED IN BALTIMORE AND WHICH PROVIDES RECORDED TAX INFORMATION TO TAXPAYERS HAVING TOUCH-TONE TELEPHONES.

IN FY 1983, IRS WILL AGAIN CONTRACT FOR PRODUCTION OF TAX INFORMATION SHOWS FOR TELECAST BY PUBLIC BROADCAST TELEVISION STATIONS, AND PROMOTE THE USE OF FORMS 1040/1040A FILMS AND CASSETTES BY COMMUNITY/LIBRARY AUDIENCES.

SO OVERALL, EMPHASIS WILL BE PLACED IN FY 1983 ON ASSISTING ALL TAXPAYERS WHO MUST RELY ON IRS FOR ASSISTANCE, WHILE ALLOWING ENHANCED IRS VOLUNTEER TAX ASSISTANCE

AND TAX INFORMATION PROGRAMS AND THE PRIVATE SECTOR TO MEET THE TAX LAW NEEDS OF OTHER TAXPAYERS.

3. Safeguarding Taxpayers' Rights

The Service knows full well how important voluntary compliance is to the success of our tax administration system. We simply cannot operate without it. We are well aware that the extent of that voluntary compliance -- and therefore the success of our system -- rests to a large degree on taxpayers' perceptions of the fairness and equity of tax administration. In our role as the administrators of the system, we make every effort to insure the continual presence of that fairness and equity in all aspects of our operations, but particularly so in the area of taxpayers' rights.

Of course, it would be foolish to say that mistakes do not occur. With total staffing of over 85,000 in fiscal year 1982, and anticipated personal contacts of all types with nearly 50 million taxpayers, the likelihood of occasional errors is obvious. The fact that personal judgement on the part of our employees is required in most, if not all, taxpayer contacts -- such as examining returns, collecting delinquent accounts, investigating possible criminal violations, etc. -- is certainly a factor present in the prospect for errors. Add to this the known complexity of the tax law, and the scope of our problem becomes clearer. This organization simply has too many contacts with the public -- too large a "social presence," if you will -- to expect it to maintain a perfect record.

None of this is meant as an excuse, however. The Service has a commitment to all taxpayers to safeguard

THEIR RIGHTS IN THE SYSTEM, AND WE CONSTANTLY STRIVE TO IMPROVE OUR RECORD IN THIS RESPECT.

WE BELIEVE THE SYSTEM OF SAFEGUARDS CURRENTLY IN PLACE IS WORKING WELL TO PROTECT TAXPAYERS' RIGHTS. ALL OUR OPERATING PROGRAMS INCLUDE POLICIES AND PROCEDURES TO PREVENT ABUSES OF TAXPAYERS RIGHTS. AS YOU MIGHT EXPECT, HOWEVER, WE HAVE ESPECIALLY STRINGENT SAFEGUARDS IN OUR EXAMINATION, COLLECTION, AND CRIMINAL INVESTIGATION AREAS, SINCE THEY HAVE THE MOST FREQUENT CONTACTS WITH TAXPAYERS LIKELY TO BE OF AN ADVERSARIAL NATURE. ADDITIONALLY, OUR INTERNAL AUDIT AND INTERNAL SECURITY DIVISIONS OVERSEE THESE SAFEGUARDS THROUGH THEIR INDEPENDENT AUDITS AND REVIEWS. WE ALSO PROVIDE EXTENSIVE TRAINING (OVER 500 COURSES IN FY 1981) FOR EMPLOYEES WHICH COVERS TAXPAYER RIGHTS AND RESPONSIBILITIES.

PERHAPS THE MOST VISIBLE SAFEGUARD IRS HAS IS THE EXISTENCE OF THE TAXPAYER OMBUDSMAN AND THE PROBLEM RESOLUTION PROGRAM (PRP). THE NEED FOR AN OMBUDSMAN SHOULD NOT REALLY SURPRISE ANYONE CONSIDERING THE VOLUME OF WORK AND TAXPAYER CONTACTS HANDLED BY THE SERVICE. FOR EXAMPLE, IN FISCAL YEAR 1981, THE IRS:

- RECEIVED NEARLY 167 MILLION TAX RETURNS OF ALL TYPES
- ISSUED OVER 71 MILLION INDIVIDUAL TAX REFUNDS
- EXAMINED APPROXIMATELY 2 MILLION TAX RETURNS
- CLOSED APPROXIMATELY 2.2 MILLION DELINQUENT ACCOUNTS

IF THE SERVICE WERE CORRECT IN ITS DEALING WITH TAXPAYERS 99.9% OF THE TIME, WE WOULD STILL BE INCORRECT THOUSANDS OF TIMES, GIVEN THE VOLUME OF CONTACTS. IT IS THE RESPONSIBILITY OF THE OMBUDSMAN AND THE PROBLEM RESOLUTION OFFICERS TO CUT ACROSS ORGANIZATIONAL AND OPERATIONAL BOUNDARIES TO SEE THAT THESE SAFEGUARDS ARE

FUNCTIONING PROPERLY AND TO PROVIDE THE TAXPAYER SOMEWHERE TO TURN WHEN THEY DO NOT.

SPECIFICALLY, THE OMBUDSMAN PERFORMS THE FOLLOWING MAJOR FUNCTIONS:

- ADMINISTERS THE NATIONWIDE PROBLEM RESOLUTION PROGRAM
- REPRESENTS TAXPAYER INTERESTS AND CONCERNS WITHIN THE IRS DECISION-MAKING PROCESS
- REVIEWS IRS POLICIES AND PROCEDURES FOR POSSIBLE ADVERSE EFFECTS ON TAXPAYERS
- PROPOSES IDEAS ON TAX ADMINISTRATION TO BENEFIT TAXPAYERS
- REPRESENTS TAXPAYERS' VIEWS IN THE DESIGN OF TAX FORMS AND INSTRUCTIONS
- SUGGESTS CHANGES TO EXISTING OR PROPOSED LEGISLATION

I WOULD LIKE TO EMPHASIZE THAT NONE OF THESE FUNCTIONS ARE MEANT TO SUBSTITUTE FOR OTHER EXISTING SERVICE PROGRAMS, BUT RATHER AS WAYS TO INSURE THAT THESE EXISTING PROGRAMS WORK AS INTENDED. IF THEY DO NOT, THIS OFFICE CAN EFFECT CHANGES.

SOLVING DIFFICULT PROBLEMS OR COMPLAINTS QUICKLY IS ONE OF THE MAIN REASONS FOR HAVING PRP, BUT JUST AS IMPORTANT IS GIVING TAXPAYERS ACCESS TO A SINGLE CONTACT POINT -- ONE PERSON WHO WILL LISTEN TO THEIR PROBLEM AND FOLLOW-UP ON IT THROUGHOUT THE IRS ORGANIZATION. TOO OFTEN IN THE PAST TAXPAYERS COMPLAINED THAT WE NOT ONLY DIDN'T SEEM TO SOLVE THEIR PROBLEMS, BUT THAT THEY WERE REFERRED FROM ONE EMPLOYEE OR OFFICE TO ANOTHER -- RARELY TALKING TO THE SAME PERSON TWICE -- AND OFTEN WITHOUT ANY INDICATION THAT THE PROBLEM WAS BEING WORKED ON OR THAT ANYONE CARED. THE BUREAUCRACY TOO OFTEN IS TERMED "FACELESS," BUT PRP AND THE TAXPAYER OMBUDSMAN IS OUR ATTEMPT TO PUT A HUMAN FACE ON AT LEAST A PART OF IT.

4. Closing the Tax Gap

Certainly one of the major issues facing the Service today is the "underground economy," or the "tax gap." The term "tax gap" is meant to apply to all revenue lost to the U.S. Treasury through noncompliance with our tax laws. As such, it includes tax losses from returns not filed when legally due, from unreported income and underreported income, as well as overstated expenses, deductions, and exemptions claimed on filed returns. It covers revenues lost from noncompliance by corporations and by individuals in both the legal sector and the illegal sector of the economy.

"Legal sector" earnings include incomes from regularly established enterprises or occupations, and from legal activities that are sometimes called irregular because they take place in informal settings. Examples of these "legal sector" earnings which are sometimes unreported include interest and dividends, tips, and earnings of independent contractors. By comparison, "illegal sector" incomes are those derived from organizing, financing, producing, and delivering illegal goods or services related to drugs, gambling, prostitution, and so on. Estimates in this sector are particularly difficult to obtain, needless to say.

The Service is working now to update its data on the size of the tax gap and we expect to have a report available late this summer. Until then, all estimates are preliminary and subject to change. Our latest estimate, however, is that the total legal sector gap has tripled in 8 years, from $29 billion in 1973 to $87 billion in 1981. Our projections are that this legal sector tax gap will continue to increase, if no significant

INROADS ARE MADE ON THE PROBLEM, AND WILL REACH NEARLY $120 BILLION IN 1985. AT THE SAME TIME, OUR ESTIMATES WOULD INDICATE THAT THE GAP IN THE ILLEGAL SECTOR HAS INCREASED FROM ABOUT $2 1/2 BILLION IN 1973 TO $8 BILLION IN 1981, WITH A PROJECTED INCREASE TO $13 BILLION IN 1985.

IN ADDITION TO THESE TAX GAP ESTIMATES, WE HAVE APPROXIMATELY $20.5 BILLION DOLLARS FROM CASES IN OUR 1981 ACCOUNTS RECEIVABLE INVENTORY. THESE ARE AMOUNTS OWED BY TAXPAYERS MUCH OF WHICH IN THE PAST WE HAVE NOT BEEN ABLE TO COLLECT, LARGELY BECAUSE OF INADEQUATE RESOURCES. I AM PLEASED TO REPORT THAT THE ENFORCEMENT INITIATIVE IN OUR 1983 BUDGET SHOULD ALLOW US TO REDUCE THIS INVENTORY.

DESPITE THE MAGNITUDE OF THE PROBLEM, I CAN'T EMPHASIZE TOO STRONGLY THAT MOST TAXPAYERS ARE CONSCIENTIOUS, AND THAT THE TAX SYSTEM IS BASICALLY SOUND AND RELIABLE. THE TAX REPORTED VOLUNTARILY - THAT IS, WITHOUT ANY ENFORCEMENT EFFORT - IS APPROXIMATELY 80 PERCENT OF WHAT IS OWED. WE SHOULD NOT OVERLOOK, HOWEVER, THE FACT THAT THIS VOLUNTARY COMPLIANCE RESULTS LARGELY FROM A VERY WORKABLE SYSTEM OF TAX ADMINISTRATION RULES BASED ON WITHHOLDING AND INFORMATION REPORTING, AND A TRADITION OF EFFECTIVE AND FAIR TAX ADMINISTRATION.

THE SERVICE BELIEVES THAT LEGISLATION IS NEEDED, HOWEVER, IF WE ARE GOING TO MAKE SIGNIFICANT INROADS INTO THE TAX GAP. IT SIMPLY IS NEITHER COST-EFFECTIVE NOR PRACTICAL TO EXPECT THAT INDIVIDUAL AUDITS WILL ENABLE THE SERVICE TO SIGNIFICANTLY REDUCE THE LEVELS OF UNREPORTED INCOME. THIS CAN BEST BE DONE ONLY THROUGH PROVIDING THE SERVICE WITH INFORMATION ON THE TRANSACTION GIVING RISE TO THE INCOME, OR BY WITHHOLDING

ON THE PAYMENT OF THE INCOME. BILLS INTRODUCED BY SENATORS DOLE AND GRASSLEY, AS WELL AS MEMBERS OF THE HOUSE, WOULD SIGNIFICANTLY EXPAND THE AMOUNT OF INFORMATION REPORTED TO THE SERVICE AND, IN THE PENSION AREA, SHOULD INCREASE THE NUMBER OF PERSONS ELECTING TO HAVE WITHHOLDING APPLIED TO THEIR PENSION AND ANNUITY PAYMENTS.

BOTH H.R. 6300, INTRODUCED BY CHAIRMAN ROSTENKOWSKI, AND H.R. 5829, INTRODUCED BY MR. CONABLE, ALSO CONTAIN PROVISIONS TO AID THE SERVICE IN COMBATTING THOSE TAXPAYERS WHO CLAIM EXCESS DEDUCTIONS. THE BILLS ACCOMPLISH THIS BY FIRST INCREASING THE RISK INVOLVED IN SUCH ACTIVITY THROUGH THEIR INCREASED PENALTY PROVISIONS. SECOND, H.R. 6300 WOULD ALLOW THE SERVICE TO ENJOIN FRAUDULENT TAX AVOIDANCE SCHEMES BEFORE THEY ARE SOLD TO TAXPAYERS. THIRD AND PERHAPS MOST IMPORTANT, THE PARTNERSHIP AUDIT PROVISION WOULD ENABLE THE SERVICE TO SIGNIFICANTLY REDUCE THE STAFF TIME NEEDED TO AUDIT ABUSIVE TAX SHELTER SCHEMES.

YOU MAY BE INTERESTED IN A BRIEF REVIEW OF OUR EFFORTS TO GET AT THE ILLEGAL SECTOR OF THE TAX GAP THROUGH OUR CRIMINAL INVESTIGATION DIVISION'S SPECIAL ENFORCEMENT PROGRAM (SEP). THIS PROGRAM DEALS WITH THOSE INDIVIDUALS AND ORGANIZATIONS DERIVING SUBSTANTIAL INCOME FROM ILLEGAL ACTIVITIES, MOST OF WHICH IS NOT REPORTED TO THE IRS. SUCH ILLEGAL ACTIVITIES INCLUDE NARCOTICS TRAFFICKING, GAMBLING, LABOR RACKETEERING, ORGANIZED CRIME, AND OTHER ACTIVITIES.

DURING FY 1982, THE SERVICE IS DEVOTING APPROXIMATELY 45% OF ITS CRIMINAL INVESTIGATION DIRECT INVESTIGATIVE TIME TO THE SPECIAL ENFORCEMENT PROGRAM. THIS IS A SUBSTANTIAL INCREASE OVER THE 29% THE PROGRAM RECEIVED IN FY 1980, AND REFLECTS OUR CONTINUED BELIEF THAT THE

ENORMOUS PROFITS REAPED BY ORGANIZED CRIME MUST NOT BE ALLOWED TO ESCAPE TAXATION. THE CRIMINAL INVESTIGATION DIVISION'S TOTAL CASE INVENTORY, AS OF SEPTEMBER 30, 1981, CONSISTED OF 5,582 CRIMINAL INVESTIGATIONS, OF WHICH 3,514 ARE GENERAL ENFORCEMENT PROGRAM CASES AND 2,068 OR 37% INVOLVE CASES RELATED TO ILLEGAL ACTIVITIES UNDER THE SPECIAL ENFORCEMENT PROGRAM. OUR OVERALL COMMITMENT OF RESOURCES TO THIS PROGRAM HAS CONTINUALLY INCREASED OVER THE PAST FIVE YEARS, UP MORE THAN 40% THIS PAST FISCAL YEAR.

AN IMPORTANT PART OF THE SERVICE'S SPECIAL PROGRAM INVOLVES CLOSE COORDINATION WITH OTHER LAW ENFORCEMENT AGENCIES. THESE EFFORTS INCLUDE OUR PARTICIPATION IN THE DEPARTMENT OF JUSTICE STRIKE FORCE PROGRAM, AS WELL AS OUR PROGRAM TO INVESTIGATE HIGH-LEVEL DRUG TRAFFICKERS AND FINANCIERS WITH ASSISTANCE FROM CUSTOMS AND THE DRUG ENFORCEMENT ADMINISTRATION, SUCH AS PARTICIPATION IN THE FLORIDA CASH FLOW PROJECT (OPERATION GREENBACK).

RECENTLY WE HAVE ALSO INCREASED OUR PARTICIPATION ON GRAND JURY INVESTIGATIONS. OUR INVENTORY OF SUCH CASES HAS MORE THAN DOUBLED OVER THE PAST YEAR, DUE IN PART TO REVISIONS IN OUR PROCEDURES THAT STREAMLINED THE APPROVAL PROCESS FOR SUCH INVESTIGATIONS.

CONCLUSION

SENATOR, NO ONE IS REALLY GOING TO DISAGREE THAT COLLECTING TAXES IS PERHAPS THE MOST UNPOPULAR FUNCTION OF GOVERNMENT. THE ANNOYANCE FELT BY MOST PEOPLE AS THEY PREPARE AND SUBMIT THEIR TAX RETURNS, COUPLED WITH THE SENTIMENT THAT THE TAXES THEMSELVES ARE TOO HIGH, COMBINE TO REINFORCE THIS UNPOPULARITY. AT THE SAME TIME, HOWEVER, I THINK WE CAN ALL AGREE THAT COLLECTING TAXES IS PERHAPS THE MOST IMPORTANT FUNCTION OF

GOVERNMENT. IN FACT, WITHOUT THE REVENUES SO COLLECTED, ALL OTHER FUNCTIONS OF GOVERNMENT WOULD ULTIMATELY GRIND TO A HALT.

WE BELIEVE OUR ROLE AS THE NATION'S TAX COLLECTOR MAKES US UNIQUE AMONG FEDERAL AGENCIES -- BUT IT ALSO CARRIES HEAVY RESPONSIBILITIES. IN THE MOST EXTREME CASE, IT CAUSES US TO BALANCE THE NEED TO COLLECT SOME $20 BILLION IN OVERDUE ACCOUNTS WITH THE NEED TO PROTECT THE RIGHTS OF THOSE WHO ARE DELINQUENT. IN MORE ROUTINE CASES, IT REQUIRES US TO BE CIVIL PUBLIC SERVANTS. IF TAXES ARE THE PRICE WE PAY FOR A CIVILIZED SOCIETY, AS OLIVER WENDELL HOLMES SAID, THEN IT IS THE MISSION OF THE SERVICE TO SEE THAT THE "PRICE" IS NOT TOO MUCH FOR HONEST CITIZENS TO BEAR.

I BELIEVE MR. BERRY HAS SOME PREPARED REMARKS AS WELL.

BUDGET AND PROBLEM RESOLUTIONS

Mr. EGGER. First off let me say I'm delighted to be here. I think it's a tremendous help to get away from Washington where sometimes we get a little myopic with our own conversations back and forth. So I think that it's useful to be out here where we can talk to the people directly, and hear from them. I'm also happy that our field officials are here with me to answer questions that fall within their particular bailiwick.

Let me deal first very briefly with the budget and some of the problems that we seek to solve there. From your work on the Appropriations Subcommittee, you're well aware that we are not going out of business. The workload seems to grow somewhat each year, something in the range of about 5 to 7 percent, whereas our resources have grown only at a rate of about 2 or 2½ percent over a relatively long period.

STAFFING

The fiscal year 1983 budget is the first one that we've really had a chance to get into in any depth, in that it wasn't already on the way for preparation before I took office. So this year, each and every one of the major projects and programs of the Internal Revenue Service had a thorough review, and we hope as a result, to be able to fully utilize our resources to make the Internal Revenue Service not only more efficient and more up to date, but also to deal more directly with some of the problems. We don't think the problem is necessarily solved by adding people only, and in fact our

proposal goes well beyond that, we are nonetheless going to be asking for staffing at the level of 88,673 for fiscal year 1983, with a total dollar budget of $2.9 billion. While that sounds like a great deal, keep in mind that our collections are 90 percent of the total revenues of the Federal Government and run well over $600 billion: the price there seems fairly modest.

In this budget we are including something over 5,000 new positions, aimed primarily at the problem of collection of past due accounts and to enhance our auditing and enforcement capabilities particularly with respect to corporate returns and the more complicated individual returns, primarily those over the $50,000 range.

TAXPAYER SERVICE

Some of the new directions we're taking in this budget do include a decrease in what we've known as taxpayer service. We are primarily reducing the toll-free telephone service that we have used over the past several years, and starting with fiscal 1983 only the questions relating to taxpayer accounts will be answered by telephone. Nonetheless, we are expanding and innovating some other programs, such as our self-help program. We've determined this year that instead of simply having the self-help program in our offices around the country, that perhaps we can do more for the taxpayers by taking our own programs out to public libraries, out to public school classrooms and so on, in office hours, evenings, weekends, and things of that kind, so that the taxpayers who do want and need assistance from us can do so without having to take time off work. So we are going to be experimenting a great deal with that between now and the next filing season, and going forward with, we hope, a much more effective program. That, together with our volunteer program, we think will be very effective, so while we're not doing the same thing that we've done in the past, we believe that the opportunity, the access to assistance by taxpayers as a group will be just as effective.

TAXPAYER RIGHTS

On the subject of safeguarding taxpayers' rights, it is a fallacy to think that it's not in our interest to do everything we can possibly do to see to it that we do not violate taxpayers' rights. The nature of our tax system in this country relies so heavily on taxpayers' willingness, cooperation, and perception that the system is being administered in an even-handed and fair fashion, that it would be simply out of character for us to introduce this thing in any other way, because that would be exactly the opposite effect of what we're seeking.

Having said that, however, I think I have to be realistic and say that with 85,000 people all over the country in some 900 locations, and a good percentage of those people having to use judgment at one degree or one level or another, human beings being what they are, it just would sound foolish for me to say that we aren't going to make a mistake here and there. Of course we will. We do everything in our power to head those things off. We have something over 500 different training programs in our enforcement area alone attempting to school our enforcement personnel in all of the as-

pects of taxpayers' rights that we think they'll come in contact with.

So while I'm saying that because we are human beings, we will make mistakes, we are taking every possible step and every possible precaution to minimize that kind of event. That's not an excuse, it's simply a statement of fact because of the size and the scope and complexity of the problems that we deal with.

On balance, we believe that the steps that we have taken and will continue to take make the safeguarding of taxpayers' rights work quite well.

We naturally concentrate our safeguards on the examination, collection and criminal investigation activities, since of course those are the areas where there's apt to be adversarial contact with taxpayers, more than any of the other things we do.

OMBUDSMAN AND PROBLEM RESOLUTION

One of the things that I would like to highlight here is the taxpayer Ombudsman and the problem resolution program. This was initiated in around 1977–1978, before I took office, but we have continued to emphasize this whole program. And I think it's working extremely well when you recognize that we have to deal with something over 150 million tax returns of every kind, type and description, and that we issue annually well over 70 million individual tax refunds, and we carry out the examination of 2 million tax returns each year. And then on the collection side, we closed in the last fiscal year about two and a quarter million past due collection cases, successfully, with no problem whatsoever.

So even if we do our work 99.9 percent accurately, correctly and without flaw, you would still find in that tenth of 1 percent a few mistakes that we simply do our best to avoid, but they are there.

The Ombudsman program I think is one I'd like to comment on just a bit more. First of all, the Ombudsman in Washington reports directly to me, and is not subject to any other supervision anywhere in the Internal Revenue Service. He is on my personal staff. He administers our nationwide problem resolution program. He is in fact a representative of the taxpayers. We handled last year well over 350,000 cases in the problem resolution program. So it's a very, very effective program which has been well received.

Now, let me simply say that the problem resolution program is not meant to substitute for our usual procedures. That is, merely because a taxpayer doesn't agree with the conclusion reached by an examining revenue agent, that it is a case for the problem resolution officer. The case for the problem resolution officer is where something went awry in the system, and that individual has the authority and the obligation to then cross any functional lines that they need to in order to try to resolve the taxpayer's problem.

I think the main thing is that the problem resolution officer is another person to whom the taxpayer can turn and know that that problem is going to be solved.

UNDERGROUND ECONOMY

Let me just comment briefly on the so-called underground economy, or what I prefer to call the tax gap, because tax gap basically

represents a great many things—tax returns that do not get filed, unreported income or underreported income, overstated expenses, deductions, and exemptions, all claimed on the forms which are filed. It covers a variety of things, but the amounts are staggering. In the "legal sector" alone, that is to say legal activities where the income is not reported and subjected to tax, such as unreported interest dividends, tips, earnings of independent contractors, capital gains left off returns, et cetera, that whole thing amounted to, by our latest calculations, around $87 billion in 1981, which is roughly three times the amount back in 1973. So over an 8-year period we have tripled the amount of unreported income, or unpaid taxes, if you will.

Senator DECONCINI. Is the $87 billion the amount of unpaid taxes?

Mr. EGGER. That's correct.

On the illegal side, we're estimating that at about $8 billion in 1981. So as you can see, it's a very small percentage of the total, but nonetheless a very important percentage.

ILLEGAL ACTIVITIES OF ORGANIZED CRIME

To give you some idea of how important we think it is, some 45 percent of the direct investigative time of our Criminal Investigation Division in fiscal year 1982 is going to be directed at the activities of organized crime, such as narcotics trafficking and other activities of organized criminal elements in our society.

Without question, we do feel the lack of certain information and the lack of authority and the lack of downside risk in some of these areas, if you will, and so we're grateful that Senators Dole and Grassley, as well as Chairman Rostenkowski on the House side, have introduced legislation which, if enacted, will go a long way in assisting us in recapturing some of this underground economy. I'm satisfied in my own mind that if we can once turn the perception around in this country, so that individuals believe that, "A," others are being made to pay their taxes, and will suffer some penalty if they don't, and, "B," that if they do play fast and loose with their tax returns that there will be considerable risk on their own part, then the whole system can once again climb back up to a level of compliance that is and has been the envy of the free world.

As an aside, I just came back from a meeting in South America with my counterparts from some 30 nations all over the world. And I can assure you that we're all of a mind to want to continue this sort of activity, this sort of effort.

SPECIAL ENFORCEMENT PROGRAM

I mentioned that some 45 percent of our criminal investigation time is going to be spent on the special enforcement program, and a lot of that is in such areas as participation in the various strike forces of the Department of Justice, as well as drug traffic investigations on the financial side, because we're persuaded that significant amounts of illegal income are never seen on the tax return, so we have to take rather unusual measures to secure that. We work very closely with the Drug Enforcement Administration, and with

the Bureau of Customs, and so on, among others the well-known Operation Greenback in Florida, has been highly successful.

COLLECTION OF TAXES

Let me just conclude, Senator DeConcini, by saying no one is really going to disagree that collecting taxes is perhaps the most unpopular function of Government. The annoyance that most people feel as they prepare and submit their tax returns, coupled with the sentiment that the taxes themselves are too high, combine to reinforce this unpopularity. At the same time, however, I think we can all agree that collecting taxes is perhaps the most important function of Government, since obviously without it Government doesn't function. In fact Government would ultimately come to a halt without an ability to collect revenue.

So we believe our role as the Nation's tax collector makes us unique among Federal agencies, but it always carries very heavy responsibilities. In the most extreme case it causes us to balance the need to collect some $20 billion in overdue accounts with the need to protect the rights of those who are delinquent. In the more routine cases, it requires us to be civil public servants. If taxes are the price we pay for civilized society, as Oliver Wendell Homes said, then it is a mission of the Service to see that "price" is not too much for honest citizens. Thank you.

Mr. Berry also has some comments, and he's going to summarize those.

Senator DECONCINI. Thank you, Mr. Egger, very much for your testimony. We'll come back to the questions; Mr. Berry, if you have a full statement we will place it in the record as if given but if you'll summarize, we would appreciate it.

[The statement follows:]

STATEMENT OF PRESCOTT A. BERRY

I TOO APPRECIATE THE INVITATION TO APPEAR HERE TODAY AS A PART OF YOUR REVIEW OF IPS ACTIVITIES IN ARIZONA. I'VE HAD THE PLEASURE OF SERVING AS THE DISTRICT DIRECTOR FOR THE STATE OF ARIZONA, PHOENIX DISTRICT, SINCE 1975. THE INTERNAL REVENUE SERVICE ACTIVITIES IN THE STATE OF ARIZONA ARE CARRIED OUT BY 499 FULL-TIME EMPLOYEES, SUPPLEMENTED BY TEMPORARY EMPLOYEES IN OUR TAXPAYER SERVICE DIVISION DURING THE TAX FILING SEASON. THESE EMPLOYEES ARE BROKEN DOWN BY DIVISIONS AS FOLLOWS:

TAXPAYER SERVICE DIVISION	- 33 EMPLOYEES
EXAMINATION DIVISION	- 222
COLLECTION DIVISION	- 129
CRIMINAL INVESTIGATION DIVISION	- 39
RESOURCES MANAGEMENT DIVISION - SUPPORT OPERATIONS	- 76

OF COURSE, THE LARGEST NUMBER OF THESE EMPLOYEES ARE LOCATED IN PHOENIX AT THE HEADQUARTERS OFFICE FOR THE PHOENIX DISTRICT. WE MAINTAIN TWO FULL-SERVICE OFFICES IN THE DISTRICT - THE PHOENIX HEADQUARTERS OFFICE AND TUCSON. WE ALSO MAINTAIN FOUR OTHER OFFICES THROUGHOUT THE STATE IN WHICH ONE OR MORE OF OUR FUNCTIONS IS REPRESENTED. THESE OFFICES ARE LOCATED IN SCOTTSDALE, FLAGSTAFF, PRESCOTT, AND YUMA.

TAXPAYER SERVICE DIVISION

OUR TAXPAYER SERVICE DIVISION IS OUR PUBLIC INFORMATION, EDUCATION, AND SERVICE FUNCTION IN THE DISTRICT. THE DIVISION PROVIDES ASSISTANCE TO TAXPAYERS WHO COME INTO OUR OFFICES, CALL IN BY TELEPHONE, OR WRITE REGARDING SPECIFIC TAX SITUATIONS OR PROBLEMS. DURING THIS FISCAL YEAR, WE ANTICIPATE ANSWERING IN EXCESS OF 600,000 TELEPHONE CALLS AND RESPONDING TO IN EXCESS OF 54,000 INDIVIDUALS WHO WALK INTO OUR OFFICE REQUIRING ASSISTANCE. WE ALSO HAVE PROVIDED VOLUNTEER INCOME TAX ASSISTANCE (VITA) TO OVER 5,000 INDIVIDUALS, AS WELL AS TAX COUNSELLING FOR THE ELDERLY (TEC) TO IN EXCESS OF 6,000 ELDERLY TAXPAYERS. AS INDICATED BY MR. EGGER IN HIS STATEMENT, WE WILL BE EMBARKING ON A NEW DIRECTION IN TAXPAYER SERVICE IN FISCAL YEAR 83. THIS NEW DIRECTION WILL MEAN THAT, BEGINNING IN FISCAL YEAR 83, OUR SERVICE WILL BE LIMITED TO ANSWERING TAXPAYERS' INQUIRIES ON THEIR ACCOUNTS, SUCH AS BILLINGS, REFUNDS, ETC. WE WILL NO LONGER BE ABLE TO RESPOND TO SUBSTANTIVE TAX LAW QUESTIONS

ON THE TELEPHONE. THIS MEANS THAT WE ANTICIPATE ANSWERING ONLY 180,000 CALLS AND RESPONDING TO APPROXIMATELY 32,000 INDIVIDUALS WHO COME INTO OUR OFFICES REGARDING THESE ACTIVITIES IN FISCAL YEAR 83. AS THE COMMISSIONER POINTED OUT, BY SIZING DOWN OUR TELEPHONE SERVICE, WE WILL BE ABLE TO PRESERVE MOST OF THE OTHER SERVICES THAT HAVE BEEN TRADITIONALLY OFFERED TO TAXPAYERS THROUGH OUR TAXPAYER SERVICE DIVISION.

PROBLEM RESOLUTION PROGRAM

OUR PROBLEM RESOLUTION OFFICE IS MAINTAINED AT THE DISTRICT OFFICE, WITH THE REPRESENTATIVES OF THE DIRECTOR IN ALL OTHER OFFICES PARTICIPATING AS NECESSARY. MATERIALS ARE PROVIDED IN EACH OF THE OFFICES FOR INDIVIDUALS TO WRITE DIRECTLY TO OUR PROBLEM RESOLUTION OFFICER WITH PROBLEMS THAT ARE NOT RESOLVED BY TRADITIONAL MEANS. DURING THIS FISCAL YEAR, THE PROBLEM RESOLUTION OFFICER IN THE DISTRICT HAS RESPONDED TO 690 INQUIRIES. IN FISCAL YEAR 81 OUR PROBLEM RESOLUTION OFFICE RESPONDED TO 2,000 INQUIRIES. THE NUMBER OF INQUIRIES TO THAT OFFICE APPEARS TO HAVE STABILIZED AT ABOUT 165 INQUIRIES PER MONTH.

EXAMINATION DIVISION

OUR EXAMINATION DIVISION IS RESPONSIBLE FOR THE EXAMINATION OF INCOME, ESTATE, GIFT, EMPLOYMENT AND EXCISE TAX RETURNS FOR THE STATE OF ARIZONA. DURING FISCAL YEAR 82, WE PLAN TO EXAMINE SOME 20,000 RETURNS OF THE APPROXIMATE 1,500,000 RETURNS FILED IN THE STATE. THIS MEANS THAT OUR COVERAGE, OR RATIO OF RETURNS EXAMINED TO RETURNS FILED, WILL BE APPROXIMATELY 1.34%. THESE ACTIVITIES WILL BE CARRIED OUT WITH A STAFF THAT INCLUDES APPROXIMATELY 118 REVENUE AGENT POSITIONS, 4 ESTATE AND GIFT TAX ATTORNEYS; 51 TAX AUDITORS, AND 32 ADMINISTRATIVE AND OTHER SUPPORT POSITIONS.

ALTHOUGH WE SPEND A MAJOR PORTION OF OUR RESOURCES IN WHAT WE WOULD CALL TRADITIONAL TAX ENFORCEMENT ACTIVITIES, I THINK IT IS IMPORTANT TO POINT OUT THAT A SUBSTANTIAL PORTION OF THESE RESOURCES ARE NOW BEING DIRECTED TOWARD ABUSIVE TAX SHELTERS AND ILLEGAL TAX PROTESTORS. THE EXAMINATION DIVISION HAS RECEIVED APPROXIMATELY 7,000 QUESTIONABLE W-4'S THAT ARE PRESENTLY BEING PROCESSED AND DETERMINATIONS MADE WITH REGARD TO THEIR VALIDITY. IN MY OPINION, WE HAVE TO SPEND AN INORDINATE AMOUNT OF OUR TIME (IN EXCESS OF 35% OF THE DIRECT EXAMINATION TIME) DEALING WITH INDIVIDUALS WHO WOULD ATTEMPT TO AVOID PAYING THEIR RIGHTFUL TAX THROUGH

SUCH SCHEMES AS: REFUSING TO INCLUDE TAX RETURN INFORMATION ON THE FORM 1040, BECAUSE OF A CLAIM OF CONSTITUTIONAL RIGHTS; REDUCING THE GROSS INCOME ON THE RETURN BECAUSE OF THE DECLINING VALUE OF THE DOLLAR; FILING A RETURN WITH A STATEMENT THAT ONLY GOLD OR SILVER CURRENCY CAN BE TAXED; OR FILING A BLANK FORM 1040 WITH ONLY THE TAXPAYER'S NAME AND ADDRESS AND POSSIBLY SIGNATURE; NON-PAYMENT OR UNDER-PAYMENT OF TAXES BECAUSE OF A PROTEST RETURN; VOWS OF POVERTY WHERE THE TAXPAYER RECEIVES INCOME FROM NON-RELIGIOUS SOURCES AND DECLARES THAT IT IS NON-TAXABLE BECAUSE OF A VOW OF POVERTY; PROTEST TYPE ADJUSTMENTS WHERE THE RETURN CONTAINS SPECIFIC UNALLOWABLE ITEMS IDENTIFIED AS PROTEST ITEMS; THE USE OF THE W-4 OR WITHHOLDING SYSTEM TO CLAIM EXCESSIVE EXEMPTIONS OR TAX EXEMPT STATUS TO AVOID WITHHOLDING OF TAXES BY EMPLOYERS; AS WELL AS OTHER ILLEGAL TAX PROTEST ACTIVITIES, SUCH AS PROMOTING TAX AVOIDANCE SCHEMES INVOLVING FOREIGN TRUSTS AND FICTITIOUS BANK ACCOUNTS. THESE ACTIVITIES, AS WELL AS OTHER DELAYING TACTICS BY TAX PROTESTORS, SUCH AS NOT PROVIDING INFORMATION WHEN REQUESTED, NUMEROUS FREEDOM OF INFORMATION REQUESTS, REQUESTS TO RECORD INTERVIEWS, ADD TO OUR USE OF RESOURCES IN AN ATTEMPT TO DEAL WITH THESE ACTIVITIES.

COLLECTION DIVISION

PHOENIX DISTRICT COLLECTION DIVISION IS MADE UP OF SOME 62 FIELD REVENUE OFFICERS AND SUPPORTED BY 67 OTHER INDIVIDUALS IN THE DIVISION. AT THE PRESENT TIME, WE HAVE APPROXIMATELY 20,000 DELINQUENT ACCOUNTS AND 10,000 DELINQUENCY INVESTIGATIONS IN OUR INVENTORY. THIS REPRESENTS OVER $51 MILLION IN ASSESSED BUT NOT YET COLLECTED TAXES. THESE INVENTORY BALANCES REPRESENT INCREASES OF 20% OVER THE PRIOR YEAR IN DELINQUENT ACCOUNTS AND IN EXCESS OF 6% INCREASE IN DELINQUENCY INVESTIGATIONS. THE TOTAL OF ACCOUNTS DETERMINED TO BE UNCOLLECTIBLE IN ARIZONA AS OF SEPTEMBER 30, 1981, WAS $41 MILLION. IN THE AREA OF ELICITING DELINQUENT RETURNS, THE DISTRICT AVERAGES APPROXIMATELY $2,200 PER DELINQUENT RETURN SECURED, OR IN EXCESS OF $700 PER STAFF HOUR EXPENDED FOR THIS ACTIVITY. DURING FISCAL YEAR 81, THE DISTRICT EFFECTED 76 SEIZURES OF PROPERTY ON ACCOUNTS WITH OUTSTANDING LIABILITIES OF APPROXIMATELY $1,500,000. SALE OR REDEMPTION OF THESE SEIZED ASSETS RESULTED IN THE COLLECTION OF IN EXCESS OF $600,000. THROUGH FISCAL YEAR 81, OUR SEIZURES REPRESENTED 2.5 SEIZURES PER ACCOUNT. THIS COMPARES TO FISCAL 80 OF 3.7 SEIZURES PER ACCOUNT. THE COLLECTION DIVISION ALSO SUFFERS FROM THE ILLEGAL TAX PROTESTER ACTIVITY. DURING FISCAL YEAR 81, 1,172 ILLEGAL TAX PROTESTERS WERE IDENTIFIED IN THE

DISTRICT, WHICH WAS AN INCREASE OF OVER 100% OVER 1980 FIGURES. THROUGH THE EFFORTS OF OUR COLLECTION DIVISION, WE HAVE COLLECTED $20,000,000 IN FISCAL YEAR 82. IN FISCAL YEAR 81, WE COLLECTED $35,500,000.

BUSINESS BANKRUPTCY FILINGS IN ARIZONA THROUGH APRIL 1982 HAVE INCREASED BY 127% OVER THE SAME PERIOD IN 1981. THERE WERE 6,658 BANKRUPTCY FILINGS IN 1981 WHICH WAS A 6.8% INCREASE OVER 1980. THIS TREND NOT ONLY PLACES A STRAIN ON OUR RESOURCES, BUT RESULTS IN LOST FUTURE REVENUES AND THE LOSS IN MOST CASES OF UNCOLLECTED TAXES ACCRUED PRIOR TO BANKRUPTCY.

CRIMINAL INVESTIGATION DIVISION

THE CRIMINAL INVESTIGATION DIVISION IN THE PHOENIX DISTRICT HAS SUBMITTED 18 PROSECUTION CASES DURING THIS FISCAL YEAR, WHICH INVOLVE SUCH VIOLATIONS AS CONSPIRACY TO EVADE INCOME TAXES, MULTIPLE REFUND CASE CLAIMS, FAILURE TO FILE RETURN CASES, AND FALSE RETURNS.

THE ACTIVITIES OF THIS DIVISION ARE NUMEROUS AND INCLUDE PARTICIPATION IN THE FINANCIAL CRIMES TASK FORCE FORMED BY THE U. S. ATTORNEY FOR ARIZONA. THIS TASK FORCE, WHICH INCLUDES THE U. S. ATTORNEY'S OFFICE, THE DRUG ENFORCEMENT AGENCY, THE FEDERAL BUREAU OF INVESTIGATION, UNITED STATES CUSTOMS, THE PHOENIX POLICE DEPARTMENT, AND THE ARIZONA DEPARTMENT OF PUBLIC SAFETY, IS PRIMARILY DIRECTED TOWARD NARCOTIC TRAFFICKING AND RELATED TAX VIOLATIONS. IT WAS FORMED IN JANUARY 1981 AND HAS RESULTED IN MORE THAN 60 FEDERAL INDICTMENTS. IN 14 OF THESE INDICTMENTS THE INDIVIDUALS HAVE BEEN CHARGED WITH CRIMINAL TAX VIOLATIONS. IN THE MOST RECENT INDICTMENT 53 PERSONS WERE CHARGED WITH DRUG AND TAX VIOLATIONS INVOLVING A NATIONWIDE DRUG DISTRIBUTION ORGANIZATION.

THE PHOENIX DISTRICT CONCEIVED AND INITIATED A PROJECT ENTITLED "BUSINESS OPPORTUNITIES". THIS PROJECT WAS DESIGNED TO DEAL WITH THE PROBLEMS ASSOCIATED WITH BUSINESS WITH A HIGH POTENTIAL FOR SKIMMING (NOT REPORTING ALL INCOME FOR TAX PURPOSES). WE FEEL THIS ACTIVITY WILL BE EXTREMELY SUCCESSFUL AND IN FACT HAS ALREADY NATIONWIDE PUBLICITY IN THE WALL STREET JOURNAL.

THIS DIVISION IS ALSO HEAVILY INVOLVED IN THE ILLEGAL TAX PROTEST ACTIVITY IN IDENTIFYING PROMOTERS OF TAX EVASION SCHEMES. OUR EFFORTS IN THIS AREA ARE PRIMARILY DEVOTED TO CHALLENGING THE PROMOTERS WHO WOULD ATTEMPT TO REAP PROFITS FROM UNINFORMED AND UNSUSPECTING TAXPAYERS IN SETTING ALL TYPES OF SHELTERS.

SAFEGUARDING TAXPAYER RIGHTS

AS POINTED OUT BY THE COMMISSIONER, WE IN THE PHOENIX DISTRICT KNOW FULL WELL HOW IMPORTANT VOLUNTARY COMPLIANCE IS TO THE SUCCESS OF AN EFFECTIVE TAX ADMINISTRATION SYSTEM. THE FACT THAT PERSONAL JUDGEMENT ON THE PART OF OUR EMPLOYEES IS REQUIRED IN MOST ALL TAXPAYER CONTACTS, SUCH AS THE EXAMINATION OF RETURNS, THE COLLECTION OF DELINQUENT ACCOUNTS, AND THE INVESTIGATION OF POSSIBLE CRIMINAL VIOLATIONS AND OTHER ACTIVITIES, PRESENTS AN EVER-PRESENT PROSPECT FOR ERRORS. WE MAKE EVERY EFFORT TO ENSURE THAT OUR EMPLOYEES ARE WELL INFORMED PROFESSIONAL INDIVIDUALS WHO CARRY OUT THEIR ASSIGNED TASK. WE ARE COMMITTED TO SAFEGUARDING EACH TAXPAYER'S RIGHTS WITHIN THE SYSTEM, AND CONSTANTLY STRIVE TO IMPROVE IN THESE AREAS. PERHAPS THE MOST VISIBLE SAFEGUARD WITHIN THE DISTRICT IS OUR PROBLEM RESOLUTION PROGRAM. THE DISTRICT'S PROBLEM RESOLUTION OFFICER IS COMMITTED TO HELPING THE TAXPAYER RESOLVE PROBLEMS THAT ARE NOT HANDLED THROUGH THE NORMAL PROCESSES OF OUR ORGANIZATION. WITH THE ABILITY THAT THE PROBLEM RESOLUTION OFFICER HAS TO CUT ACROSS DIVISIONAL LINES AND GATHER INFORMATION FROM WITHIN THE DISTRICT AND THE SERVICE, THESE PROBLEMS FOR THE MOST PART ARE RESOLVED WITHIN THE FIRST 30 DAYS THAT THEY ARE IDENTIFIED TO THE PROBLEM RESOLUTION OFFICE. WE FEEL THE PROBLEM RESOLUTION OFFICE PROVIDES THE TAXPAYER WHO HAS A PROBLEM WITH AN AVENUE THROUGH WHICH THE PROBLEM CAN BE EXPEDITIOUSLY RESOLVED.

WE HAVE CONTINUED TO MAINTAIN WORKING RELATIONSHIPS WITH THE TAX PRACTITIONER COMMUNITY IN THE STATE OF ARIZONA. WE MEET WITH ALL GROUPS IN THE TAX ADMINISTRATION COMMUNITY IN ARIZONA AT LEAST ANNUALLY, IN AN ATTEMPT TO DEAL WITH ANY IDENTIFIED ACTIVITIES THAT ARE CREATING PROBLEMS FOR THEM AND FOR OURSELVES IN THE OVERALL TAX ADMINISTRATION ACTIVITY. WE ALSO ACCEPT SPEAKING ENGAGEMENTS WHICH WOULD ALLOW US AN OPPORTUNITY TO DISCUSS TAX ADMINISTRATION WITH ORGANIZATIONS WHO ARE INVOLVED IN THIS ACTIVITY THROUGHOUT THE STATE. WE ALSO MEET ANNUALLY WITH CONGRESSIONAL STAFFERS IN THE STATE IN ORDER TO SHARE CONCERNS AND RESOLVE PROBLEMS COMMON TO OUR RESPECTIVE ROLES REGARDING TAXPAYERS.

CONCLUSION

I FEEL THAT IN THE STATE OF ARIZONA WE HAVE ONE OF THE MOST EFFECTIVE DISTRICTS IN THE COUNTRY. AS THE COMMISSIONER POINTED OUT EARLIER, COLLECTING TAXES IS PERHAPS THE MOST UNPOPULAR FUNCTION IN GOVERNMENT, BUT, WE ALL AGREE,

A VERY VITAL FUNCTION TO OUR VERY EXISTENCE. WE ARE COMMITTED TO CARRY OUT THIS FUNCTION AS DIRECTED BY CONGRESS TO THE BEST OF OUR ABILITY.

SENATOR, I WOULD LIKE TO THANK YOU, AND PARTICULARLY YOUR LOCAL STAFF, FOR THEIR COOPERATION IN HELPING US TO PREPARE FOR THESE HEARINGS. I ALSO INVITE YOU AND OTHER MEMBERS OF THE COMMITTEE TO TOUR OUR LOCAL OFFICE IN TUCSON OR THE DISTRICT OFFICE IN PHOENIX.

PHOENIX DISTRICT

Mr. BERRY. Thank you, Senator.

I too appreciate the invitation to appear today as part of your review of the Internal Revenue Service activities in Arizona. My remarks will be directed primarily toward the points you raised affecting the fiscal year 1982 budget, the collection of overdue taxes, and the underground economy, or "tax gap" as it is sometimes described, as well as safeguards that we've taken to protect taxpayers' rights.

Briefly, the Phoenix District is responsible for administrating the tax laws throughout the State of Arizona. We have approximately 500 employees who are assigned to five functional divisions: The Taxpayer Service Division, the Examination Division, the Collection Division, the Criminal Investigation Division, and the Resources and Management Division.

We anticipate the staff for fiscal year 1983 will increase modestly. The principal increase will be in the collection function, which is responsible for collection of delinquent taxes and securing delinquent returns. A somewhat smaller increase will be experienced in the examination program in the form of additional revenue agents and tax auditors. Most of our employees are located in Phoenix at the headquarters office. We maintain two full service offices in the district—the Phoenix and Tucson offices. We also maintain four other offices throughout the State, in which one or more of our functions is represented. These offices are located in Scottsdale, Flagstaff, Prescott, and Yuma.

TAXPAYER SERVICE DIVISION

Our Taxpayer Service Division is our public information education and service function in the district. The Taxpayer Service Division provides assistance to taxpayers who come into our offices, call in by telephone or write regarding specific tax situations or problems. During fiscal year 1982 we anticipate answering in excess of 600,000 telephone calls and responding to in excess of 54,000 individuals who walk into our office requesting assistance. We have also provided volunteer income tax assistance, which is referred to often as the VITA program, to over 5,000 individuals, as well as providing tax counseling for the elderly to an excess of 6,000 elderly taxpayers.

As indicated by Mr. Egger, we'll be embarking on a new direction in fiscal year 1983 in the taxpayer service program. This new direction will mean essentially that our service will be limited to

answering taxpayers' inquiries on their accounts, such as billings, refunds, and the like. We will no longer be able to respond to substantive tax law questions on the telephone. Thus, in fiscal year 1983 we anticipate answering 180,000 calls and responding to approximately 32,000 individuals who visit our offices. As the Commissioner pointed out, by sizing down our telephone service, we will be better able to preserve most of the other services that have been offered the taxpayers through our Taxpayer Service Division.

PROBLEM RESOLUTION OFFICE

I'd like to refer to our problem resolution office, which is maintained at the district office, with the representatives of the director in all other offices participating as necessary. Materials are provided in each of the offices for individuals to write directly to our problem resolution office with problems that are not resolved by traditional means. In this fiscal year thus far, the problem resolution officer has responded to more than 700 inquiries. In fiscal year 1981 our problem resolution office responded to 2,000 inquiries.

EXAMINATION DIVISION

The Examination Division in the district is responsible for the examination of all income, estate, gift, employment, and excise tax returns for the State of Arizona. During fiscal year 1982 we anticipate examining approximately 20,000 returns of the total 1½ million returns filed in the State. This means that our coverage or ratio returns examined to returns filed, will be approximately 1.34 percent.

TAX ENFORCEMENT ACTIVITIES

Although we spend a major portion of our resources in what we would call traditional tax enforcement activities, I think it is important to point out a substantial portion of these resources are now being directed toward abusive tax shelters and illegal tax protestors. The Examination Division this year has received approximately 7,000 questionable W–4 withholding certificates. They're presently being processed, and a determination will be made with respect to their validity; a high percentage is invalid. In my opinion, we in the Phoenix District are required to spend an inordinate amount of our time dealing with individuals who attempt to flagrantly avoid paying their rightful tax, by their refusing to include tax return information on Form 1040 because of claimed constitutional rights, reducing the gross income on the return because of declining value of the dollar, filing a return with the statement that only gold or silver currency can be taxed, or filing a blank Form 1040 with only the taxpayer's name and address and possibly signature, nonpayent or underpayment of taxes because of a protest return, vows of poverty, where the taxpayer received income from nonreligious sources and declares it is nontaxable because of the vow of poverty, protest type adjustments for the return filed containing specific unallowable items identified as protest items, the widespread use of the W–4 or the withholding system to claim

excessive exemptions or tax-exempt status to avoid withholding of taxes by employers.

There are other schemes, such as promoting tax avoidance schemes involving foreign trusts and fictitious bank accounts. These activities, as well as other delaying tactics by tax protesters, such as not providing information when requested or required, numerous freedom of information requests, requests to record interviews, add to our use of resources in an attempt to deal with these activities.

DELINQUENT RETURNS

In the area of delinquent taxes, we currently have approximately 20,000 delinquent accounts and 10,000 delinquency investigations. The delinquent investigations deal primarily with returns that our records indicate have not been filed.

This represents over $51 million in assessed but not yet collected taxes. These inventory balances represent increases of nearly 20 percent over the prior year in delinquent accounts and in excess of a 6-percent increase in delinquency investigations. The total of accounts determined to be uncollectible in Arizona as of September 1981 was $41 million. In the area of delinquent returns, the district averages approximately $2,200 per delinquent return secured, which is in excess of $700 per staff spent on these activities. In fiscal year 1981 we effected 71 seizures of property on accounts with outstanding delinquent liabilities approximating $1.5 million. Sale or redemption of these seized assets resulted in collection of more than $600,000. In fiscal year 1981, our seizures represented 2.5 seizures per account. This compares to fiscal year 1980 of 3.7 seizures per account.

ILLEGAL TAX PROTESTER ACTIVITY

The Collection Division also suffers from illegal tax protester activity. In fiscal year 1981, approximately 1,200 illegal tax protesters were identified in the district, which was an increase of over 100 percent over 1980. Through the efforts of our Collection Division, we have thus far collected over $20 million in fiscal year 1982.

BANKRUPTCIES

Bankruptcies are increasing at a phenomenal rate, by approximately 127 percent over the same period in 1981. There were 6,658 bankruptcy filings in 1981, which was a 6.8-percent increase over 1980. This trend not only places a strain on our resources, but results in lost future revenues and the loss in most cases of uncollected taxes accrued prior to bankruptcy.

CRIMINAL INVESTIGATION DIVISION

The Criminal Investigation Division is responsible for investigating such violations as conspiracy to evade income taxes, multiple refund case claims, failure to file return cases, and false returns. The activities of this division are numerous, and include participation in the Financial Crimes Task Force formed by the U.S. Attorney for Arizona. This task force, which includes representatives of

the U.S. Attorney's Office, Drug Enforcement Agency, Federal Bureau of Investigation, the U.S. Customs Service, the Phoenix Police Department and the Arizona Department of Public Safety, is primarily directed toward narcotic trafficking and related tax violations. It was formed in January 1981, and thus far has resulted in more than 60 Federal indictments. In 14 of these indictments, the individuals have been charged with a criminal tax violation. The most recent indictment involved 53 persons, who were charged with drug and tax violations involving a nationwide drug distribution organization. In addition, we have conceived and initiated a project entitled the "Business Opportunities Project." This project was designed to deal with problems associated with businesses with a high potential for skimming; that is, not reporting all income for tax purposes. We feel that this activity will be extremely successful; and in fact it has already received nationwide publicity.

The Criminal Investigation Division is also heavily involved in the illegal tax protest activity, primarily in identifying promoters of tax evasion schemes. Our efforts in this area are primarily devoted to challenging the promoters who attempt to reap profits from uninformed and unsuspecting taxpayers.

TAXPAYER RIGHTS AND SAFEGUARDS

In the area of taxpayer rights and safeguards, pointed out by the Commissioner, we in the Phoenix District know full well how important compliance is with the success of an effective tax administration system. In fact, the personal judgment on the part of our employees is required in almost all taxpayer contacts. It presents an ever-present prospect for errors. We make every effort to insure that employees are well informed, professional individuals who carry out their assigned tasks. We are committed to safeguarding each taxpayer's rights within the system, and constantly strive to improve these areas. Perhaps the most visible safeguard within the district is our problem resolution program. The district problem resolution officer strives to help taxpayers resolve problems that are not handled through normal processes of our organization.

COLLECTION OF TAXES

We have continued to maintain working relationships with the tax practitioner community in the State of Arizona, and we periodically meet with these groups and others in an attempt to share concerns and resolve problems.

I feel that in the State of Arizona we have one of the most effective districts in the country. Collecting taxes is perhaps the most unpopular function in Government, but a very vital function of our existence. We are committed to carrying out this function as directed by Congress to the best of our ability. I'd like to thank you and particularly the local staff for their cooperation in helping us to prepare for these hearings. I also want to invite you and other members of your committee and staff to tour our district office at your convenience.

Senator DECONCINI. Mr. Cardoza, do you have any statements or comments you prefer to make?

Mr. CARDOZA. No, Senator, I prefer not to make a statement this morning; however, I'm very pleased to be here and receive constructive criticism.

Senator DECONCINI. We're pleased to have you here. I want to thank the staff, Margot Myers on the staff in the work she's done in preparing these hearings, both here and Phoenix, and Bobby Mills from the Committee on Appropriations.

REPRISALS AGAINST TAXPAYERS

Mr. Berry, let me first address a question that hangs around my mind from reading Congressman Hansen's testimony and some of his statements. He testified at the Ways and Means Committee hearing on April 26 that:

> When a citizen complains about the Service, he knows that he does it under the expectation that he will pay the price to the Internal Revenue Service.

Then he went on to say, again quoting:

> The taxpaying complainer with a legitimate problem is not getting that fairness and due process, and in fact they're generally considered as tax evaders and enemies of the Internal Revenue Service, with guilt and punishment predetermined and enforced by the Internal Revenue Service.

These are all serious accusations, from a Member of Congress who has spent a great deal of time attempting to oversee the Internal Revenue Service. I want to know if you can give me your unqualified assurance that such reprisals against taxpayers with legitimate concerns or complaints against the Internal Revenue Service, do not and will not occur under your administration?

Mr. BERRY. Senator, I have been the District Director in Arizona since 1975, my experience has been that we try to do a conscientious job of administering the tax law. If a taxpayer has a legitimate complaint, I see it as our duty and obligation to be responsive to that complaint. There are various perceptions of what is right and wrong as related to taxes, but within the perception that we understand of fairness, we try to administer that law uniformly. We have no ax to grind with any taxpayer; we're in the business of administering the tax law uniformly and fairly.

Senator DECONCINI. If a citizen complains, and is critical of the Service, there is absolutely no policy to attempt to audit that person, or to investigate that person because they might have been critical of the Service?

Mr. BERRY. There is no such policy that I know of, sir.

Senator DECONCINI. Do you know of any cases where that's happened, in Arizona?

Mr. BERRY. Not in my experience.

Senator DECONCINI. Before you came here, did you know of any?

Mr. BERRY. I'm not knowledgeable of what happened prior to my arrival, Senator.

BUDGET CUTS IN TAXPAYER SERVICE

Senator DECONCINI. Mr. Egger, addressing the budget cuts, the Internal Revenue Service plans to cut a net of $34.5 million, and 1,691 staff years in taxpayer services in fiscal year 1983. Yet a number of former Internal Revenue Service commissioners have

testified before Congress that your proposed cut in taxpayer service will result in substantial increases in noncompliance among taxpayers who normally rely on these taxpayer services and assistance. Senator Cohen of Maine, Chairman of the Internal Revenue Service Oversight Subcommittee noted March 24 that the Internal Revenue Service itself had predicted a "significant decline in compliance" if taxpayer service is reduced.

How many fewer taxpayers will you be able to assist next year with these cuts in place, and can you give us the specifics as to how we will be cut back in Arizona?

FORMS OF TAXPAYER SERVICE REDUCTIONS

Mr. EGGER. Well, to begin with, the reduction in taxpayer service is primarily in the toll-free telephone answering part of our service.

When we examined the necessity to reduce our budget because of conclusions reached by the Treasury and the administration, we were in effect forced into going back and re-examining just what it was that we were doing in taxpayer service, and to try to evaluate the effectiveness of it. We found, for example, that in our telephone service a significant portion of the calls that we are answering were calls from taxpayers needing to know something about their own account, they had received a notice from the Service or their refund was unduly delayed and they needed to know where it was, things of that kind. So we made the decision that that had to be a priority item. In the next fiscal year we're going to retain that service for the purpose of answering inquiries with respect to those items only Internal Revenue Service can answer. You see, this is not something a taxpayer can acquire from the private sector.

On the other side of it, the substantive questions, we found that a great many of the questions that we get were questions from practitioners rather than taxpayers actually preparing their own returns. We felt that if the practitioners were charging their clients for the service, then perhaps they should take the trouble to look up the answers rather than calling us on the phone and asking our people to do it for them. So that's one aspect of it.

PILOT PROGRAM

And then finally, a great many of the inquiries were not of any great substantive nature, so we have piloted a program in the Baltimore District, in which we have put cassette recordings covering a wide variety of subjects on the telephone. If a taxpayer wishes to know something about a given subject, all they need to do is call in on a touch-tone telephone and they can listen to upwards of 30 or 40 different subjects. That is a considerably less costly way of doing it.

Senator DECONCINI. Is that only in Baltimore?

Mr. EGGER. That was a pilot project in Baltimore last year. It will be in effect nationwide in the coming season.

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CUTBACKS IN TOLL FREE TELEPHONE

Senator DECONCINI. Excuse me, Mr. Egger, you wrote a memo to the Deputy Treasury Secretary dated October 29, 1981, where you noted possible consequences of the cutback in the toll-free telephone; you said that 27 million taxpayers will have to look elsewhere for tax law assistance; and that a significant decline in voluntary compliance and a current decline in revenues may result.

Are you still of that feeling?

Mr. EGGER. Well, I started off by saying that I was of that view at the time. Since then I've had to reexamine it and go into considerably more detail and determine just what did comprise those 27 million telephone calls we got.

Senator DECONCINI. What percent of the 27 million calls are from practitioners? Do you have any idea?

Mr. EGGER. I don't have any idea about that. The reason we reached that conclusion is because every year we get importuning from many practitioner groups, asking that we set aside a separate telephone for them so they don't have to wait in line.

Senator DECONCINI. Has there been any study to see what effect these cuts would have, and how many calls come in from practitioners and how many taxpayers call in for substantive tax law questions?

Mr. EGGER. We have no way of identifying the caller when they come in. What we do is keep a list of the subjects, and we have that all broken down. I'd be happy to supply that for the record. It's a fairly long list showing the percentage of calls in a long list of categories. So we've done that.

Our ability to analyze calls in that sense is quite sophisticated.

Senator DECONCINI. The list, when received, will be inserted in the record.

[The list follows:]

Exhibit 1d. Part 1

QUALITY REVIEW OCCURRENCE SAMPLING
SURVEY AND ACCURACY RATES
NATIONAL - TELEPHONES - 1982 FILING PERIOD

RANK	QRE CODE	QRE DESCRIPTION	# QRE's SAMPLED	% OF TOTAL	ACCURACY RATE
1	30	FORMS/PUBLICATIONS REQUESTS	9452	12.6	99.92
2	74	REFUNDS (FORM 3911)	5791	7.7	99.71
3	6	FILING OF RETURNS	2376	3.2	99.24
4	78	SERVICE CENTER NOTICES	2297	3.1	99.43
5	115	INTEREST (SCH B)	2129	2.8	98.54
6	32	OFFICE LOCATION/HOURS	2116	2.8	99.76
7	713	NON-RECEIPT OF W-2	1744	2.3	99.25
8	14	ESTIMATED TAXES	1551	2.1	98.71
9	4	FILING REQUIREMENTS - WHO MUST FILE	1444	1.9	98.48
10	38	NON-IRS CALL	1398	1.9	99.71
11	10	DEPENDENTS (FORM 2120)	1284	1.7	96.57
12	66	DEPRECIATE, AMORTIZE, DEPLETE (FORM 4562)	1257	1.7	95.86
13	420	INCOME AVERAGING, SCHEDULE G	1240	1.7	97.18
14	712	PREPARATION OF W FORMS	1202	1.6	98.09
15	56	AMENDED RETURNS AND CLAIMS (FORM 1040X)	1202	1.6	98.42
16	37	OTHER IRS CALL	1169	1.6	99.79
17	70	ACCOUNT INFORMATION	1151	1.5	99.48
18	330	TAX (ITEMIZED DEDUCTION)	1048	1.4	97.90
19	125	CAPITAL GAIN/LOSS (SCHED D, FORM 4797)	1004	1.3	96.91
20	230	EMPLOYEE BUSINESS EXPENSE, FORM 2106	1000	1.3	96.70
21	8	FILING STATUS	963	1.3	96.99
22	861	INDIV RETIREMENT SAVINGS ARRANGEMENT	956	1.3	97.70
23	410	TABLES AND SCHEDULES	949	1.3	98.31
24	715	FEDERAL TAX DEPOSIT FORMS 501, etc.	928	1.2	98.06
25	730	FED INC & SOC SEC W/H FRM 941, 942, 943	925	1.2	97.62
26	50	REQUEST FOR PHOTOCOPY OF RETURN	922	1.2	99.24
27	72	PENALTIES/INTEREST (FORM 2210)	901	1.2	95.67
28	42	COLLECTION PROCEDURES/INFORMATION	855	1.1	99.42
29	120	SOLE PROPRIETORSHIP, SCHEDULE C	823	1.1	97.45
30	365	MISCELLANEOUS DEDUCTIONS	789	1.1	97.47
31	40	OTHER IRS PROCEDURE/INFORMATION	731	1.0	99.59
32	128	SALE/EXCHG PERSONAL RESIDENCE (FORM 2119)	730	1.0	97.26

RANK	QRE CODE	QRE DESCRIPTION	# QRE's SAMPLED	% OF TOTAL	ACCURACY RATE
33	190	NON-TAXABLE INCOME	692	.9	98.84
34	100	INCOME	689	.9	97.10
35	685	RESIDENTIAL ENERGY CREDIT	681	.9	96.88
36	320	MEDICAL AND DENTAL	675	.9	96.44
37	714	WITHHOLDING/FICA TABLES	664	.9	98.04
38	530	SELF-EMPLOYMENT TAX (SCHEDULE SE)	634	.8	95.58
39	630	EARNED INCOME CREDIT	612	.8	98.53
40	150	PENSION AND ANNUITY INCOME SCHEDULE E	587	.8	98.30
41	7	EXTENSIONS (FORMS 2688, 4868)	556	.7	97.84
42	110	DIVIDENDS, SCHEDULE B	535	.7	97.57
43	370	UNALLOWABLE DEDUCTION	526	.7	98.86
44	9	EXEMPTIONS	525	.7	98.29
45	345	CASUALTY OR THEFT LOSSES, FORM 4684	512	.7	96.48
46	160	RENT/ROYALTY INCOME - SCHD E/4831	504	.7	98.02
47	52	REQUEST FOR TAXPAYER ID NO (SS-4/5)	500	.7	98.80
48	1	FORM 1040/1040A	476	.6	97.27
49	760	INFO STMTS RECIPIENTS FRM 1087,1099	464	.6	98.28
50	250	INDIVIDUAL RETIREMENT ACCOUNTS	454	.6	97.14
51	340	CONTRIBUTIONS	447	.6	98.88
52	720	FORM 940	441	.6	98.87
53	400	INCOME TAX COMPUTATION	441	.6	97.51
54	615	CHILD CARE CREDIT (FORM 2441)	421	.6	97.39
55	79	PAYMENT	406	.5	99.26
56	305	ITEMIZED DEDUCTIONS VS ZBA	394	.5	97.72
57	106	UNEMPLOYMENT COMPENSATION	393	.5	97.96
58	220	MOVING EXPENSE FORM 3903	391	.5	97.19
59	335	INTEREST EXPENSE	384	.5	96.61
60	620	INVESTMENT CREDIT (FORM 3468)	375	.5	95.20
61	280	DISABILITY INCOME EXCLUSION	350	.5	96.57
62	140	INSTALLMENT SALES	340	.5	97.94
63	600	CREDITS AND PAYMENTS	300	.4	98.67
64	155	LUMP-SUM DISTRIBUTIONS	299	.4	96.99
65	315	SCHEDULE A (GENERAL)	278	.4	97.84
66	0	GENERAL	276	.4	98.55
67	3	ALIEN FORMS 1040C/1040NR	262	.3	97.71
68	610	CREDIT FOR ELDERLY (SCHEDULE R)	260	.3	97.31

RANK	QRE CODE	QRE DESCRIPTION	# QRE's SAMPLED	% OF TOTAL	ACCURACY RATE
69	64	BASIS OF ASSETS	259	.3	96.53
70	870	EXEMPT ORGANIZATIONS	242	.3	99.17
71	90	TELEPHONE ASSISTANCE OBSERVABLE REF	241	.3	98.76
72	46	TAXPAYER EDUCATION	236	.3	99.58
73	710	CIRCULAR E	214	.3	96.26
74	105	WAGES, SALARIES, TIPS	209	.3	96.65
75	130	SUPL SCHD OF GAINS AND LOSSES FORM	185	.2	92.97
76	850	GIFT TAX-GENERAL (FORM 709)	182	.2	97.80
77	920	WINDFALL PROFITS TAX EXCISE TAX ON	179	.2	96.65
78	820	CORPORATIONS	179	.2	98.88
79	810	PARTNERSHIPS	170	.2	98.24
80	39	REQUEST FOR CALLBACK	166	.2	100.00
81	43	PROBLEM RESOLUTION OFFICE	158	.2	100.00
82	200	ADJUSTMENTS	147	.2	97.28
83	180	SCHEDULE FILLER	145	.2	97.93
84	310	ZERO BRACKET AMOUNT	140	.2	99.29
85	68	BAD DEBTS	140	.2	92.86
86	862	KEOUGH PLANS	139	.2	98.56
87	700	EMPLOYMENT	135	.2	99.26
88	300	DEDUCTIONS AND EXEMPTIONS	134	.2	97.01
89	62	RECORDKEEPING REQUIREMENTS	134	.2	97.76
90	830	FIDUCIARIES	133	.2	100.00
91	210	SICKPAY, FORM 2240	127	.2	98.43
92	711	EMPLOYER-EMPLOYEE RELATIONSHIP	125	.2	97.60
93	840	ESTATES - GENERAL (FORM 706)	121	.2	96.69
94	900	EXCISE TAXES	102	.1	97.06
95	101	OWNERSHIP OF INCOME PRODUCING ASSET	102	.1	94.12
96	175	NET OPERATING LOSS	101	.1	95.05
97	22	DECEDENT (FORM 1310)	99	.1	98.99
98	500	OTHER TAXES	87	.1	96.55
99	195	INCOME EARNED ABROAD	87	.1	100.00
100	860	EMPLOYEE PLANS	78	.1	97.44
101	185	SCHOLARSHIPS FELLOWSHIPS GRANTS	73	-	98.63
102	44	YBTK REQUESTS	71	-	100.00
103	36	PRACTIONER/PREPARER INQUIRIES	69	-	100.00
104	196	ALIMONY INCOME	68	-	97.06

RANK	QRE CODE	QRE DESCRIPTION	# QRE's SAMPLED	% OF TOTAL	ACCURACY RATE
105	430	TAX COMPUTATION SCHEDULE (SCHD TC)	66	-	98.48
106	851	FILING REQUIREMENTS	57	-	100.00
107	60	METHOD OF ACCOUNTING (FORM 3115)	55	-	100.00
108	54	PROPOSED LEGISLATION	54	-	100.00
109	863	OTHER EMPLOYEE PLANS	47	-	100.00
110	76	ACCOUNT ADJUSTMENT	42	-	100.00
111	165	INCM/LOSS FROM PART. ETC./SCHD E	41	-	92.68
112	873	EXEMPTION FROM FICA WITHHOLDING	34	-	94.12
113	821	FILING REQUIREMENT FORM 2758 7004	33	-	96.97
114	686	BUSINESS ENERGY CREDIT	32	-	96.88
115	811	FILING REQUIREMENT-FORM 2758/SCH K	31	-	100.00
116	240	KEOUGH PLAN	28	-	96.43
117	841	FILING REQUIREMENTS (FORM 706)	25	-	92.00
118	77	INFORMATION RETURN PROGRAM (IRP)	25	-	100.00
119	831	FILING REQUIREMENTS	21	-	90.48
120	815	FORM COMPLETION (FORM 1065)	20	-	100.00
121	80	WRITTEN REQUEST FOR TECH. ADVICE	18	-	100.00
122	827	PAYMENTS AND CREDITS	12	-	100.00
123	800	OTHER BUSINESS RETURNS	12	-	91.67
124	825	FORM COMPLETION (1120)	11	-	100.00
125	49	FREEDOM OF INFORMATION/PRIVACY ACT	7	-	100.00
		TOTAL	74919.		

Exhibit 1d. Part 2

QUALITY REVIEW OCCURRENCE SAMPLING
SURVEY AND ACCURACY RATES
NATIONAL - REFERRALS - 1982 FILING PERIOD

RANK	QRE CODE	QRE DESCRIPTION	# QRE's SAMPLED	% OF TOTAL	ACCURACY RATE
1	74	REFUNDS (FORM 3911)	10596	16.0	99.33
2	70	ACCOUNT INFORMATION	8814	13.3	98.92
3	66	DEP., AMOR., DEPL. (FRM 4562)	2674	4.0	98.06
4	861	INDIV RETIREMENT SAVINGS ARRANGEMENT	2401	3.6	98.04
5	125	CAPITAL GAIN/LOSS SCHED D	1786	2.7	98.88
6	78	SERVICE CENTER NOTICES	1556	2.3	99.94
7	30	FORMS/PUBLICATIONS REQUESTS	1407	2.1	100.00
8	115	INTEREST (SCH B)	1116	1.7	98.03

RANK	ORE CODE	ORE DESCRIPTION	# ORE's SAMPLED	% OF TOTAL	ACCURACY RATE	
9	72	PENALTIES/INTEREST (FORM 2210)		1103	1.7	98.10
10	620	INVESTMENT CREDIT (FORM 3468)		1031	1.6	98.45
11	160	RENT/ROYALTY INCOME (SCHD E/4831)		975	1.5	98.97
12	140	INSTALLMENT SALES		919	1.4	99.13
13	120	SOLE PROPRIETORSHIP, SCHEDULE C		832	1.3	98.20
14	150	PENSION AND ANNUITY INCOME		830	1.3	99.04
15	128	SALE/EXCH PERSONAL RESIDENCE		827	1.2	99.03
16	64	BASIS OF ASSETS		801	1.2	99.00
17	820	CORPORATIONS		765	1.2	99.35
18	230	EMPLOYEE BUSINESS EXPENSE, FORM 2106		737	1.1	97.56
19	870	EXEMPT ORGANIZATIONS		734	1.1	99.73
20	130	SUPL SCHD OF GAINS AND LOSSES FORM		730	1.1	97.46
21	920	WINDFALL PROFITS TAX EXCISE TAX ON		717	1.1	98.33
22	730	FEC INC & SOC SEC W/H FRM 941, 942, 943		707	1.1	99.01
23	76	ACCOUNT ADJUSTMENT		701	1.1	99.29
24	100	INCOME		700	1.1	99.00
25	365	MISCELLANEOUS DEDUCTIONS	649	1.0	98.77	
26	56	AMENDED RETURNS AND CLAIMS	649	1.0	98.30	
27	600	CREDITS AND PAYMENTS	611	.9	99.18	
28	810	PARTNERSHIPS	579	.9	98.80	
29	190	NON-TAXABLE INCOME	550	.8	99.64	
30	155	LUMP-SUM DISTRIBUTIONS	549	.8	98.36	
31	420	INCOME AVERAGING, SCHEDUELE G	535	.8	98.13	
32	250	INDIVIDUAL RETIREMENT ACCOUNTS	514	.8	98.25	
33	830	FIDUCIARIES	509	.8	99.21	
34	862	KEOUGH PLANS	501	.8	98.80	
35	712	PREPARATION OF W FORMS	492	.7	98.58	
36	52	REQUEST FOR TAXPAYER ID NO (SS-4/5)	487	.7	99.18	
37	14	ESTIMATED TAXES	440	.7	99.77	
38	175	NET OPERATING LOSS	439	.7	98.41	
39	345	CASUALTY OR THEFT LOSSES, FORM 4684	430	.6	97.91	
40	370	UNALLOWABLE DEDUCTION	428	.6	99.77	
41	530	SELF-EMPLOYMENT TAX (SCHEDULE SE)	419	.6	98.33	
42	335	INTEREST EXPENSE	419	.6	98.57	
43	110	DIVIDENDS, SCHEDULE B	412	.6	98.30	
44	340	CONTRIBUTIONS	408	.6	98.04	

RANK	QRE CODE	QRE DESCRIPTION	# QRE's SAMPLED	% OF TOTAL	ACCURACY RATE
45	760	INFO STMTS RECIPIENTS FRM 1087, 1099	398	.6	99.00
46	400	INCOME TAX COMPUTATION	394	.6	98.73
47	3	ALIEN FORMS 1040C/1040NR	391	.6	98.21
48	850	GIFT TAX-GENERAL (FORM 709)	388	.6	99.48
49	840	ESTATES - GENERAL (FORM 706)	374	.6	99.73
50	180	SCHEDULE FILLER	338	.5	98.82
51	68	BAD DEBTS	315	.5	96.83
52	900	EXCISE TAXES	308	.5	99.68
53	330	TAX (ITEM. DED)	305	.5	98.36
54	280	DISABILITY INCOME EXCLUSION	305	.5	99.02
55	685	RESIDENTIAL ENERGY CREDIT	304	.5	98.36
56	715	FEDERAL TAX DEPOSIT FORMS 501 ETC.	300	.5	98.33
57	320	MEDICAL AND DENTAL	298	.4	98.99
58	195	INCOME EARNED ABROAD	294	.4	98.64
59	6	FILING OF RETURNS	286	.4	98.95
60	720	FORM 940	282	.4	98.58
61	500	OTHER TAXES	278	.4	97.48
62	860	EMPLOYEE PLANS	276	.4	99.64
63	220	MOVING EXPENSE FORM 3903	273	.4	98.90
64	43	PROBLEM RESOLUTION OFFICE	262	.4	100.00
65	40	OTHER IRS PROCEDURE/INFORMATION	257	.4	99.22
66	10	DEPENDENTS (FORM 2120)	230	.3	97.39
67	8	FILING STATUS	211	.3	98.58
68	38	NON-IRS CALL	192	.3	100.00
69	0	GENERAL	179	.3	98.32
70	101	OWNERSHIP OF INCOME PRODUCING ASSET	177	.3	97.74
71	863	OTHER EMPLOYEE PLANS	175	.3	100.00
72	4	FILING REQUIREMENTS - WHO MUST FILE	170	.3	98.24
73	821	FILING REQUIREMENT FORM 2758 7004	169	.3	99.41
74	185	SCHOLOARSHIPS, FELLOWSHIPS, GRANTS	166	.3	97.59
75	105	WAGES, SALARIES, TIPS	164	.2	100.00
76	714	WITHHOLDING/FICA TABLES	161	.2	98.76
77	80	WRITTEN REQUEST FOR TECH. ADVICE	157	.2	98.09
78	79	PAYMENT	153	.2	100.00
79	851	FILING REQUIREMENTS	150	.2	99.67
80	841	FILING REQUIREMENTS (FORM 706)	150	.2	100.00

RANK	QRE CODE	QRE DESCRIPTION	# QRE's SAMPLED	% OF TOTAL	ACCURACY RATE
81	811	FILING REQUIREMENTS FORM 2758/SCH K	150	.2	100.00
82	711	EMPLOYER-EMPLOYEE RELATIONSHIP	142	.2	100.00
83	42	COLLECTION PROCEDURES/INFORMATION	141	.2	99.29
84	200	ADJUSTMENTS	140	.2	98.57
85	615	CHILD CARE CREDIT (FORM 2441)	134	.2	98.51
86	32	OFFICE LOCATIONS-HOURS	134	.2	100.00
87	713	NON-RECEIPT OF W-2	133	.2	100.00
88	700	EMPLOYMENT	129	.2	99.22
89	873	EXEMPTION FROM FICA WITHHOLDING	119	.2	99.16
90	410	TABLES AND SCHEDULES	114	.2	98.25
91	630	EARNED INCOME CREDIT	112	.2	95.50
92	831	FILING REQUIREMENTS	106	.2	94.34
93	165	INCM/LOSS FROM PART. ETC./SCHD E.	104	.2	100.00
94	60	METHOD OF ACCOUNTING (FORM 3115)	103	.2	99.03
95	300	DEDUCTIONS AND EXEMPTIONS	99	.1	98.99
96	815	FORM COMPLETION (FORM 1065)	95	.1	100.00
97	710	CIRCULAR E	94	.1	100.00
98	210	SICKPAY, FORM 2440	93	.1	100.00
99	50	REQUEST FOR PHOTOCOPY OF RETURN	91	.1	100.00
100	37	OTHER IRS CALL	85	.1	98.82
101	1	FORM 1040/1040A	81	.1	100.00
102	686	BUSINESS ENERGY CREDIT	76	.1	100.00
103	7	EXTENSIONS (FORMS 2688,4868)	76	.1	100.00
104	196	ALIMONY INCOME	75	.1	100.00
105	90	TELEPHONE ASSISTANCE OBSERVABLE REF	75	.1	97.33
106	315	SCHEDULE A (GENERAL)	73	.1	100.00
107	240	KEOGH PLAN	73	.1	97.26
108	62	RECORDKEEPING REQUIREMENTS	71	.1	100.00
109	825	FORM COMPLETION (1120)	70	.1	100.00
110	305	ITEMIZED DEDUCTIONS VS ZBA	70	.1	98.57
111	22	DECEDENT (FORM 1310)	69	.1	100.00
112	106	UNEMPLOYMENT COMPENSATION	66	-	96.97
113	46	TAXPAYER EDUCATION	65	-	100.00
114	9	EXEMPTIONS	58	-	98.28
115	77	INFORMATION RETURN PROGRAM (IRP)	56	-	100.00
116	610	CREDIT FOR ELDERLY (SCHEDULES R)	53	-	96.23

RANK	QRE CODE	QRE DESCRIPTION	# QRE's SAMPLED	% OF TOTAL	ACCURACY RATE
117	54	PROPOSED LEGISLATION	48	-	100.00
118	36	PRACTIONER/PREPARER INQUIRIES.	43	-	100.00
119	827	PAYMENTS AND CREDITS	41	-	97.56
120	430	TAX COMPUTATION SCHEDULE (SCHD TC)	23	-	95.65
121	800	OTHER BUSINESS RETURNS	22	-	95.45
122	49	FREEDOM OF INFORMATION/PRIVACY ACT	21	-	100.00
123	39	REQUEST FOR CALLBACK	20	-	100.00
124	44	YBTK REQUESTS	5	-	100.00
125	310	ZERO BRAKCET AMOUNT	2	-	100.00
			TOTAL 66359.		

SERVICES TO ELDERLY

Senator DECONCINI. I'm concerned about many States, but particularly my own State of Arizona, if we don't have the toll free telephone service. I am concerned about what some of the retirees, middle income, and lower income people are going to do. I've been told they use it very heavily, but I have no proof of that.

Mr. EGGER. That's my concern as well. You see, I've gone into this thing in considerably more depth since it was clear that we were not going to get the budget for a continuation of this telephone service. I came to these conclusions. No. 1 the people answering the telephone are not the highly trained experts that we would like to have, because the volume and the variety of calls are just too great.

SELF HELP PROGRAM

Second, in terms of the people that we really most like to reach, these are the elderly by and large, the individuals who do not have a sophisticated background who would like to be helped with their return. We believe our self-help program can be a lot more effective if we can get it out to the neighborhoods this year, and work with the volunteer programs such as VITA, which is aimed almost exclusively at the assistance of the elderly, and expand those programs. We'll be much more effective in doing the kind of things that you're talking about, than we have been in the past.

TAX COUNSELING FOR THE ELDERLY

Senator DECONCINI. But aren't you planning a cut in that particular program of about $500,000 next year?

The information I've received from the Treasury budget office shows the Internal Revenue Service plans to cut the VITA program, including tax counseling for the elderly, by $500,000 next year, from $1.96 million in fiscal 1982 to $1.4 million in 1983.

Mr. EGGER. Let me explain that, if I may. There are two volunteer programs. One is called VITA, which is volunteer income tax assistance, and it involves some 37,000 individuals around the country who come in for training, and who then assist in their own particular communities.

Another program which is sponsored by the Association of Retired Persons, is tax counseling for the elderly. They are comparable programs. But for some reason or other, Congress made the budget such that in the TCE program we reimbursed the volunteers for their travel expenses, whereas in the VITA program we do not. We do not think it's right that we should have two relatively parallel programs, one where they get reimbursed and one where they do not. We've asked the Appropriations Subcommittee this year to let us merge these programs so that we can go on the same footing on all of them.

Senator DECONCINI. But in the VITA program you're talking about suffers a substantial cut from the 1982 continuing resolution level of $1.96 million. Under the 1983 budget it's $1.46 million.

Mr. EGGER. I'm not able to give you an answer to that at the moment.

Senator DECONCINI. Submit that for the record.

[The information follows:]

STATUS OF VITA-TCE BUDGET REQUESTS

[Dollars in millions]

	Fiscal year—	
	1982	1983
VITA requested	$1.3	$1.3
VITA received	1.3	(1)
TCE requested	.16	.16
TCE received	.66	(1)

[1] No action taken to date.

TAXPAYER SERVICE TO MEMBERS OF CONGRESS

Senator DECONCINI. Let me go on to the next question. At a time when Internal Revenue Service is planning to shut down, or drastically reduce a number of critical taxpayer services used largely by the elderly low income taxpayers, I'm shocked to learn that you plan to continue providing free convenient taxpayer service to Members of Congress and congressional staffs, in well-staffed offices in both the Russell Senate Office Building and in the House Office Buildings.

I don't use those services on Capitol Hill, so maybe that's why it's hard for me to believe that Internal Revenue Service is going to continue to supply them. But even if I did I would think that they would be considered areas that ought to be cut. I'm informed that Internal Revenue Service employees are on hand 5 days a week, 8 hours a day, to answer tax questions, provide tax forms, and even help Members of Congress fill out their tax returns.

What is the cost of maintaining these services? Do you know, or can you supply the committee with that?

Mr. EGGER. I can supply that cost.
Senator DECONCINI. Submit that for the record.
[The information follows:]

COST OF IRS CAPITOL HILL OFFICES

With respect to the cost of providing assistance on Capitol Hill we estimate the total cost, including salaries, benefits and travel for staff, and for the transport of tax forms and publications, to be about $16,000. This figure is based on information provided by mid-Atlantic region and the Baltimore district office.

WALK-IN SERVICES

Senator DECONCINI. And what is the rationale in keeping this service when you have to cut back on other taxpayer services?

Mr. EGGER. First, the walk-in service in other district offices was retained this year, although on a reduced basis. The offices on Capitol Hill are not closed to the public, they are open to anyone who wishes to walk in there and receive assistance.

Second——

Senator DECONCINI. I don't think anybody knows about them. A lot of Members don't even know about them.

Mr. EGGER. They get a lot of publicity each year in the newspaper, so people should know about them. They are public offices, they're not limited to Members of Congress or their staffs.

Third, this year we reduced the number of people there from four to three, and we did not prepare any returns for Members of Congress any more than we did elsewhere in the country. And if the amount of walk-in service that we provide around the country is reduced again in fiscal year 1983, we will obviously do the same thing on Capitol Hill. Both Senator Dole and Congressman Rostenkowski have asked me in writing to be certain that we provide no service there which is not also provided in our other district offices.

Senator DECONCINI. Is that the case? Is it not true then that your employees have in fact filled out tax returns for Members of Congress?

Mr. EGGER. Those staff members over there have been instructed not to do that, and if they do do it, Senator, they do so in violation of their instructions.

Senator DECONCINI. Thank you, that's a written policy, or a verbal mandate to them?

Mr. EGGER. Yes.

Senator DECONCINI. I've heard the contrary, but I don't know for a fact.

Mr. EGGER. Well, I have given, as I've said, the two chairmen my assurances on it.

ALLEGATIONS OF OVERZEALOUS INTERNAL REVENUE SERVICE ENFORCEMENT

Senator DECONCINI. I'd like to address a couple of frightening examples of alleged Internal Revenue Service abuses that have been brought out in public and get your comments, if I can.

Mr. Berry, or Mr. Egger, either one may respond.

Having been in law enforcement a great deal of my career, I'm particularly concerned when I hear of overzealous Federal agents,

or any agents, going beyond the bounds of their authority, and roughing up taxpayers, whether it be gun owners or anyone else. The case of Dwight Snyder, an Amish cabinetmaker in Oakland, Md. was recently reported in the press and it seems to be a classic case of IRS overkill in enforcing our tax laws. Records indicate that a host of heavily armed IRS agents broke into the Snyder's house, pointing automatic weapons at Mrs. Snyder and her husband. Snyder's property was surrounded by Federal marshals. Internal Revenue Service special agents were carrying M-16's and the State police were involved and called in. Personal property was received and hauled away without a search warrant, and with no prior notice to the Snyders that they faced seizure, I understand. Now perhaps the Snyders did owe taxes. I'm quite sure that's the case, at least I'd like to think so.

But even so, wouldn't you agree that sending over 20 armed law enforcement agents to seize the property of an Amish cabinetmaker with no criminal record was a little bit of overkill for the Internal Revenue Service to follow in this case? and what assurance can all of you give this committee that such Internal Revenue Service behavior will not occur in Arizona, in Maryland, or any other State, and what can we do to watch to see that that doesn't happen again?

SNYDER CASE

Mr. EGGER. Well, Senator, I'm going to have to choose my response to that very carefully, not because I don't want to answer, but because we have a very limited ability to disclose under the statute here. While there is from Mr. Snyder and his attorney a limited waiver on disclosures, that waiver is not open ended.

Senator DECONCINI. I don't want to get into the case, and that's not my purpose. But if you can just give us some background as to how the decisions are made when you're going to use this amount of force, whether it's toward the Snyders or anyone else.

DISPUTING ALLEGATIONS

Mr. EGGER. To begin with, the seizure did take place. It took place after many years of attempts to resolve our differences with Mr. Snyder concerning his liabilities. Our revenue officers had made calls on the Snyders on a number of occasions. Mr. Snyder's property is located some 3 or 4 hours away from Baltimore, and on many occasions there had been, I won't say specific threats, but veiled threats to our people, questions to them such as "Do you know what posse comitatus is?" and "If you come around here enough times you may find out."

On one occasion, at least, two revenue officers went up there, unarmed, and they were surrounded by about a dozen of Mr. Snyder's cohorts and they were intimidated. So if you were going to be 4 hours away from any help, I strongly suspect that you would like to be protected where there had been veiled threats that if there was any attempt to seize property, that somebody was going to get hurt. Among other things that were seized were 11 weapons, half of which were loaded. There was no such thing as breaking into

their house. That did not happen. There was a court order and a proper search warrant.

Senator DECONCINI. There was a search warrant?

Mr. EGGER. Absolutely, and if anybody was armed with M-16's it was the U.S. marshals, and nobody on our staff. Nobody in the Internal Revenue Service is authorized to carry any weapon except a handgun, and that's all our special agents are ever armed with. The whole thing went off very peacefully up there. There was no threat, there was no pointing of guns at anyone.

Senator DECONCINI. Those are accusations that you dispute then?

Mr. EGGER. I certainly do.

Senator DECONCINI. I must say that they were reported to me in the press, not by the Snyders.

Mr. EGGER. I cannot account for what the press writes sometimes. Mr. Snyder has been convicted on six out of seven counts.

Senator DECONCINI. As a result of this, or prior issues?

Mr. EGGER. Violation of the tax laws. Those convictions are on appeal at the moment, but he has been convicted.

THREAT TO REVENUE OFFICERS

Senator DECONCINI. I don't understand the threat, you said of posse comitatus.

Mr. EGGER. That's just one comment that was made to one of our revenue officers.

Senator DECONCINI. How would that threaten a revenue officer?

Mr. EGGER. Because it is loose organization, based on the need to use violence if necessary.

Senator DECONCINI. This is a civilian organization, not posse comitatus of the military. Posse comitatus addresses a situation where the military is involved.

Mr. EGGER. Right.

Senator DECONCINI. You're talking about some local group of citizens?

Mr. EGGER. Right. They have the concept of protecting their property by force, if necessary, etc.

"SIXTY MINUTES" PROGRAM

Senator DECONCINI. Last November 15, I'm sure you've heard plenty about this, "60 Minutes" ran a program entitled "Pay Up or Else" about IRS and some pretty serious allegations about Internal Revenue Service activities. Maybe you've had an opportunity to answer these, I've not seen the responses. Mr. Braun, a revenue agent in Michigan admitted openly,

"If you want to move ahead and go into management, which supposedly is where all good revenue officers are all supposed to wish to be, the way to get there is to have a good track record in seizures."

The former agent who claimed to quit the IRS because he was being asked to intimidate relatively innocent small fry, admitted, again on "60 Minutes"—

In all the time I was in the service I probably made 50 or 60 seizures. I can think of only two cases where a seizure was really warranted, and in point of fact had I

not seized the property, had I given the taxpayers an opportunity to pay the taxes, we would have collected more than I got in the seizures.

The grand jury from Fort Worth recently indicted two IRS officers on charges of falsifying nearly 200 Federal tax records in order to meet "office production quotas."

Now, Mr. Egger, can you give me some assurances in the face of these statements that there is not a quota system on seizures, that there is not a policy regarding how you move ahead in the IRS by quotas, so we can have on the record the clear, concise position of the Internal Revenue Service on these allegations and any others that you care to address?

Mr. EGGER. All right.

INTERNAL REVENUE SERVICE QUOTAS

To begin with, the "60 Minutes" program people were given a lot of statistics—a lot which they used, some of which they did not. For example, we told them that out of 2.5 million successful closings of overdue or past due tax accounts in fiscal year 1980, we had 9,000 seizures. They chose to use the 9,000 but omit the fact that we successfully closed the 2.5 million cases.

It's a kind of biased reporting that's intended to get the results which apparently it did, at least in some cases.

The clear-cut stated policies of Internal Revenue are that there are no quotas as such. The quota system, to the extent it existed back prior to the fifties, has been the subject of a number of congressional investigations, including the one which brought about the total reorganization of Internal Revenue in 1952, and to the best of my knowledge there has been no quota system since. The revenue officer who appeared on the televised program and who testified that he shouldn't have made the seizures, obviously wasn't doing his job because the Service would be guided very, very largely by the judgment of a revenue officer whose job it is to determine and evaluate a given situation as to whether a seizure is necessary or not.

I'm going to ask these field executives to comment further on that, but it just strikes me that for someone to go on and say that he made 60 seizures and clearly he could have done better——

THE SEIZURE PROCESS

Senator DECONCINI. Maybe you can explain to me or Mr. Berry can. Who makes the decision that a seizure should be made? Is it the field agent who's handling the case?

Mr. EGGER. It's the recommendation by the revenue officer, but it has to be approved by his supervisor.

Senator DECONCINI. What happens in Arizona? How do you determine that someone's property is going to be seized? Who makes that judgment?

Mr. BERRY. That decision is made between the revenue officer and his group manager.

The initial assessment of whether or not an enforcement action is appropriate is at the revenue officer level. When it is decided in that person's judgment that a seizure is in order, he consults and

confers with his group manager, who makes the decision that that is an appropriate enforcement action.

Senator DECONCINI. Where is the group manager, here in Tucson or Phoenix? How many are there for Arizona?

Mr. BERRY. There are five group managers.

We do have revenue officers located without a manager in that location. That does not change the procedure.

Senator DECONCINI. He still goes through a group manager.

Mr. BERRY. He's still told to consult a group manager.

Senator DECONCINI. You are not involved then?

Mr. BERRY. Not formally.

Senator DECONCINI. When do you become involved, if at all?

Mr. BERRY. It would be an exceptional case where I would be involved in making that kind of judgment.

Senator DECONCINI. When the group manager would say, "I want to talk to someone else about it," or "I'm not sure." For what reasons would they come to you?

Mr. BERRY. That would be a situation generally, Senator, where the division manager has some concerns about the seizure.

Senator DECONCINI. What if they were going to seize the property of a Member of Congress, would they come and talk to you?

Mr. BERRY. Not necessarily.

Senator DECONCINI. What would be an example of why they would come and talk to you about it?

Mr. BERRY. It could be a seizure that may be statewide in scope, involve a public institution, or be of national implication, things of that sort. But the general seizure decision is made at the group manager level.

NUMBER OF SEIZURES IN ARIZONA

Senator DECONCINI. How many seizures were made in Arizona? Eighty some, did you say?

Mr. BERRY. I believe I mentioned—I do have that number.

Mr. EGGER. While he's looking for that, let me say that the decision to seize property comes only when it is clear that there is simply no other way to protect the Government's interest.

As long as there is a possibility of the taxpayers being able to, and wanting to, cooperate with us in working it out, we continue to work with them.

Most of the seizures take place where the taxpayer either has declined to cooperate, or where the circumstances are such that bankruptcy or something of that kind, or other creditors' claims may be involved, or there are trust fund moneys. I'd say more than half of the cases that get held up to ridicule by such programs as "60 Minutes," are cases where employers have withheld the taxes from their employees, both the income and employment taxes, and then have used that money to run their businesses, or for other purposes rather than turning it over to the Government. So in effect it's not their money in the first place, it's money that they've withheld from their employees. Most of our troublesome cases fall in that category.

Senator DECONCINI. Is it safe to say that a decision to make a seizure is considered a very demonstrative step on your part? Isn't

that kind of extreme action? Isn't that the end of the road from the standpoint of service?

Mr. EGGER. Yes; it is.

Senator DECONCINI. If that's the case, is there any consideration that says at least in the small State of Arizona that the district director would not review those as a policy matter?

JUDICIAL REVIEW

Mr. EGGER. We have very, very specific rules which must be followed, and criteria which must be met, in order for a seizure to take place. And where it's a seizure of personal property, such as anything in the taxpayer's home and so on, we can't go in there without a court order. So it's judicial review as well as the review within our own operation.

NOTICES IN WRITING

Keep in mind that long before it ever gets to seizure stage, the individual taxpayer has had not one but four notices, all in writing, each one explaining what the procedures are, what his rights and our duties and obligations are, and the powers that the Internal Revenue Service has. We include an explanation of all that with third and fourth notices, and with the fourth notice the taxpayer is told very specifically that if we do not receive payment or some indication of cooperation, et cetera, that these are the steps that will have to be taken.

Then the account is transferred from the service center where these notices are sent out, to the district where it's given taxpayer delinquent-account status. It's then turned over to the collection division in the district, where first telephone contacts or other contacts are made to attempt to collect. And if that doesn't work, then it's turned over to a revenue officer who goes out in the field to make the collection.

So when taxpayers say that somebody arrives at their house and they had no notice and so on, that would have to be an absolute abberation in our procedures for that to ever happen.

Senator DECONCINI. Mr. Berry, do you know when a seizure is going to happen, even though you're not part of the decision process?

Mr. BERRY. Generally, yes, Senator.

I'd like to respond to your question about the number, the number was 76. When a seizure is made, generally, assets are available to pay that tax liability. So, in addition to the number of notices sent, and the efforts to contact, we're generally aware that there are assets available to pay a liability, and a seizure is a last resort for the collection.

Senator DECONCINI. That's why I can't understand why the District Director wouldn't be part of that process, but that's your policy.

Mr. BERRY. He is a part of the process, but he's not involved.

Senator DECONCINI. He does not review it or say yes or no. I realize you're busy, but I'm sure in some States the number could be far greater.

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TAXPAYER RIGHTS SAFEGUARDS: CITIZENS CHOICE STUDY

Let's turn a little attention to some concern so many people have about the Internal Revenue Service. I don't know quite how to address it, but maybe you can help me.

On April 26, Tom Donahue, president of a taxpayers' organization called Citizens' Choice, Inc., testified before the House Ways and Means Committee on taxpayers' safeguards. Their National Commission on Taxes completed a 1½-year study of the relationship between taxpayers and the Internal Revenue Service, included among other things, "The taxpayers' basic perception of the IRS and tax system are disillusionment and fear."

Mr. Donahue elaborated by saying that:

> Fear is the result of a tax system gone out of control. Many times the end result is that taxpayers are so intimidated they in effect purchase their civil rights and their peace of mind by paying taxes in excess of what they believed they owed just to be safe.

These statements, I think, do reflect a great deal of complaints and fear that are expressed to me by my constituents regarding the relationship of taxpayers to the Internal Revenue Service.

What, if anything, is being done in Arizona and across the country to eradicate these fears and the intimidation that this study so carefully points out? I've looked at the study myself and it is not an extreme effort to get at somebody. It is an interview and a study of how people feel about the Internal Revenue Service. And I know Citizens' Choice, Inc., quite well and I'm very pleased that they did the study, but I'm very saddened also that their study pretty well points out what, at least, many citizens in Arizona feel about IRS. I wonder if you can comment and tell me what you've done across the country to eradicate it?

Mr. EGGER. I'm familiar with the study, Senator DeConcini.

I will beg to differ with your views——

Senator DECONCINI. OK.

VIEWS ON ACCURACY OF THE STUDY

Mr. EGGER [continuing]. Views on the accuracy of the study, or its methodology. I've looked at it rather carefully myself, and I'm not at all satisfied that it didn't operate only from a biased point of view.

But even assuming that the people that were interviewed agreed that somehow or other they only paid their taxes because they're afraid not to, to me this is a mischaracterization of the tax system in this country. I spent 30 years of my career representing taxpayers, both individuals and corportations, and I think that a lot of people believe that their tax returns are only called for examination because somebody wants to frighten them and so on. Nothing could be further from the truth, and we continualy go around the country explaining to people how we go about selecting returns for examination, why we select returns for examination, and why taxpayers who have made an honest effort to report their income properly have absolutely nothing to fear. Maybe they're afraid that they might have to pay some more taxes if a deficiency is found, but that isn't something that we generate, it isn't anything

different than saying that a corporation has to be afraid whenever the auditors show up. These are routine examinations.

If you went out and talked with the 28,000 revenue agents that we have in the field, I'm sure that none of them would say that their training is that they're supposed to go out and intimidate the taxpayers. I just don't believe that study, and I have been shown no specific evidence of where it took place.

Senator DECONCINI. Do you know of any other studies? This is the only one I'm aware of.

REVIEW OF CORRESPONDENCE

Mr. EGGER. I get a tremendous amount of correspondence that comes into the National Office each year, as you can imagine, and I review a percentage of that correspondence. Almost invariably, where the taxpayer writes in to complain about having been intimidated, or mistreated or improperly dealt with, we have found one of two things: Either the taxpayer has an argument with the law rather than with what we're doing to enforce it, or it's a case where something has gone wrong in the system.

Last year we had hearings up in Alaska very similar to these hearings, and we found a case there as a direct result of a taxpayer's testimony, where, in fact, we had a systemic problem, and we're working very hard to cure that. It had to do with the manner in which correspondence with the service center is handled. And he was exactly right, his case shouldn't have happened, but it did and we're doing everything we can to see to it that it doesn't happen any more.

Senator DECONCINI. I don't know of any other study. This one involved 25 prominent business, academic, and professional people, held hearings in 10 American cities, complied over 12,000 pages of testimony, and many things jumped out at me. But one of the most significant findings, and the one that has surfaced time, and time again, is that we in Congress must simplify our present tax system or face a total collapse of the voluntary tax compliance system.

Do you think we're anywhere near a collapse because of public perception?

COLLAPSE OF TAXPAYER COMPLIANCE

Mr. EGGER. I think that's a gross overstatement. I will say this, that it's the opinion of many, including me, that the tax laws in this country have become excessively complicated, and they're very hard to deal with. This is particularly true in many areas that were put in there to assist people. For example, such things as child-care credit, or credit for support of the elderly, and so on. These are things that are meant to help people, and yet when you try to read the regulations, or even to write regulations on these things, it is very complicated. And the whole tax code, to some extent, is characterized in that fashion.

But near collapse? I certainly don't believe that.

FLAT TAX RATE PROPOSALS

Senator DECONCINI. Do you care to comment on the proposals that have been made by a number of us, for a flat-rate tax with no deductions, only an exemption for the poorest of people?

Mr. EGGER. This kind of thing is an idea whose time has obviously come. The responsibility for dealing with it as a tax policy matter, of course, lies with the Treasury rather than with Internal Revenue. But they are looking at the problem. I've participated in some of the discussions there in Treasury, and I believe that it is important, and they believe it's important, to take a long hard look at the complex nature of the system. Whether the flat tax, as such, is the solution, or some other kind of thing that will eventually eliminate the ability to grossly underpay taxes because of real or imaginary deduction of some sort, offsetting losses that may or may not be real losses against earned income, and so on, I do not know.

I think that the idea is going to get a lot more discussion.

Senator DECONCINI. Have you been involved or asked by Treasury to do any studies or analysis of what the flat-rate tax might do to your procedural operations, the need for agents, and the cost of the Internal Revenue Service?

Mr. EGGER. No, we've not got anything like that far along.

Senator DECONCINI. Do you have the capacity to do that if you were asked to do so?

Mr. EGGER. I'm sure we can.

Senator DECONCINI. It wouldn't cause great consternation and a problem of trying to come up with the personnel to do such an analysis?

Mr. EGGER. Well, it would of course take the resources away from something else, so we always have to balance it out. But we work with the Office of Tax Analysis at Treasury all the time in making projections, whether it's revenue projections or cost projections, things of that sort.

Senator DECONCINI. What kind of direction or request do you need to make such an analysis? I'd like to have that accomplished, and I can do it by requesting you or the Secretary to do it, or writing it into law, or whatever would be the best way to approach it.

Mr. EGGER. Typically we do not do those things except at the request of the Secretary of Treasury, because his staff must, of course, be involved.

Senator DECONCINI. Thank you.

DELINQUENT INCOME TAXES

Mr. Commissioner, the national tax delinquency inventory at the start of fiscal year 1982 was $20.5 billion. Included were $4.7 billion in active accounts being pursued for collection; $2.3 billion in accounts removed from active status, but being traced or monitored; and a staggering $3.9 billion, almost $4 billion, written off as uncollectible. The General Accounting Office has recently stated that the Internal Revenue Service is not being tough enough in collecting tax debts, while others say you are overzealous, or abrasive, and even abusive at times.

What specific steps do you intend to take next year to recover these identified delinquent tax accounts, and especially to go after the nearly $4 billion you deem to be uncollectible?

ADDRESSING DELINQUENT ACCOUNTS

Mr. EGGER. This is a problem that has grown over quite a long period of time. My predecessor, have been telling the Congress for years that delinquent accounts, that is to say the past-due tax accounts, are growing, and it's going to require additional resources to manage it.

In the fiscal year 1983 budget, out of the roughly 5,000 new positions that have been included there, about 3,000 of those will be in the Collection Division. In addition, we're in the process of totally computerizing the collection function in the district offices. This will take about 2 years. We're well under way in the designing of the system and in piloting it, set for later this year and early in 1983. With the addition of the revenue officers in fiscal year 1982 and training them so that they're ready to be put out in the field early next year, we should significantly reduce the delinquent-account level, and speed up the entire process.

We certainly intend to do that by simply having more people to handle the larger number of accounts. We certainly do not intend to do it by any such tactics as more intimidation, or being tougher with people.

Senator DECONCINI. You don't mean more intimidation, you mean any intimidation?

Isn't that correct?

NONCOLLECTIBLE ACCOUNTS

Mr. EGGER. Of course, I stand corrected.

The accounts that are deemed currently not collectible as a result of individual appraisals by our revenue officers, who have decided that the taxpayers' circumstances are such that they simply cannot pay now and there's nothing to be done, because, if they don't have the money, they simply don't have it, are put aside, but they'll be carefully watched, from the statute of limitation standpoint, and that kind of thing. Sometimes there are bankruptcies, sometimes there are other circumstances which simply make those accounts noncollectible. But I'd like to note that we call them currently noncollectible, because not all of them stay noncollectible. In point of fact, our experience shows that over time we will collect a fairly significant percentage of those accounts in due course.

Senator DECONCINI. Mr. Berry, is that pretty well the same in Arizona? According to the data supplied to me by your staff, at the start of the current fiscal year, a total of $102,228,000 was listed in the Phoenix District inventory of delinquent taxes owed the Government. That compares to a national delinquent-tax inventory of $20.5 billion. Included in the Phoenix total is $41.2 million that IRS has determined to be uncollectible. That means 40 percent of all delinquent taxes in the Phoenix District are uncollectible. Is your answer pretty much the same as the Commissioners?

Mr. BERRY. Yes. I believe the figure you have there is accumulative. I'd like to point out there are two bases for reporting an account uncollectible. First would be where a taxpayer is temporarily unable to pay that account, or we're unable to locate that taxpayer. But our system is such that we do have offsets that are available. That is a refund offset, should that taxpayer have a refund, or the system indicates a gross income change of significant proportion to indicate reinvestigation is in order.

This program will be further addressed in fiscal year 1983 with the additional revenue officer staffing and office collection staffing as well as the planned 1982 pilot of the automatic collection system.

Senator DECONCINI. Gentlemen, I want to thank you, particularly Commissioner Cardoza, for traveling here, and Mr. Egger and Mr. Berry, of course, all of you for being here with us today.

CREDIBILITY WITH TAXPAYERS

I learned some things from your testimony. I can't tell you how to run your shop. Congress has its jurisdiction and mandates and you have yours. I think it is a little more severe in my opinion than you indicated, Mr. Egger, about the real tax-compliance collapse, or at least lack of credibility that our Federal Government has with taxpayers. This comes from a lot of things, I realize, many of them from Congress itself, from different parts of the executive branch all the way to the White House. I certainly hope that the Internal Revenue Service does, as our staff does, really give attention to every complaint. We can't solve all of them. We get hundreds of them, and many times we can't. We do work with your office. We thank you for your problem resolution office and their help in answering our questions and helping with our cases. But that's part of the Government, and it takes time and commitment; and all I can do is urge you to give that extra time and commitment to your employees, as I try to do to my staff. It's no easy job. Sometimes I feel the burden is more than I have the right to expect of them, working 8 hours, but they work longer than 8 hours. So we're in Government as you are to serve, not to take. So I hope that these hearings will bring forth some examination here in Arizona from which you might learn. I'm sure some of the witnesses will be extremely critical. We have no holds on anyone here. We want to know what it's all about.

Now we will turn this hearing over to our public witnesses who will come forward to testify. We welcome your remaining here and listening to the testimony, if you care to. We certainly would appreciate if you can have someone here at least to take notes, I realize you have busy schedules.

NONDEPARTMENTAL WITNESSES

SUBCOMMITTEE PROCEDURE

I would ask any of you who intend to talk about specific cases, that I cannot participate in any pending litigation, criminal or civil. I would hope that you will keep your testimony to 10 or 15 minutes, so that the other witnesses that will be coming forward

might have an opportunity to present their views to the subcommittee. And with that I thank the Internal Revenue Service witnesses, again, for the fine testimony that they've given.

Mr. EGGER. Senator DeConcini I'd like to assure you of the fact that we are here and we all are going to sit here and listen to every witness in these hearings——

Senator DECONCINI. Thank you.

Mr. EGGER [continuing]. Is a good indication of our true desire to work with the taxpayers, individually and groups, to do the job the best way we possibly can.

Senator DECONCINI. We appreciate that. I hope maybe we'll find some constructive discussion here.

I also want to say thanks to the University of Arizona of making available the facilities being used, and to Dean Henderson of the law school for turning over their facilities to us.

STATEMENT OF KENNETH WEISS

LACK OF TRAINING OF INTERNAL REVENUE SERVICE PERSONNEL

We have to limit witnesses' statements, because of time. We ask that our first witness come forward. He will be Kenneth Weiss.

If any case is to be discussed, Mr. Weiss, we would ask that you sign a waiver. We're more than happy to have you discuss things, but I'm not in a position to get involved in pending litigation. But I do want to hear from you. We particularly appreciate your coming forward, as the other witnesses will, with specific problems that they face. And if indeed we find intimidation, we in the Congress, will look carefully at corrective measures. We welcome you here.

Mr. WEISS. Thank you. You don't have a statement from me because I didn't write one.

Senator DECONCINI. OK.

Mr. WEISS. I have four areas that I'd like to present. First, I'm talking as a person who represents taxpayers who are successful and can afford to pay someone to represent them. And the problems I see, I'm sure, are compounded by the average taxpayer who runs into the same problems but is not equipped to deal with them. The major area that I've seen, especially of late, is the lack of training, professional training of the Internal Revenue Service.

Senator DECONCINI. These are the field agents?

Mr. WEISS. These are the field agents. The office agents I don't care to mention, because that's a worse problem.

Agents seem to be untrained in the areas in which they are examing, and therefore it is the responsibility of either the taxpayer or their representative to educate them. We know that under the tax law, basically the burden of proof is on the taxpayer, but the burden should not be when there is no basis for the position taken by the Service. Not mentioning a case, yesterday I had an agent in my office for 3 hours that continued to being forth issues that had no bases, and we had to dispute those bases.

Senator DECONCINI. Can you give me an example of a case that has no basis?

WITHHOLDING TAX ON INTEREST TO FAMILY FARM

Mr. WEISS. I can give you the facts of this one.

It's not a name. It has to do with the withholding tax on interest paid to a nonresident family farm. It was a requirement to withhold taxes and send them to the Internal Revenue Service. The agent requested that we withhold taxes on interest that is approved to a foreign person. The law currently only requires you to make the payment over the withholding when there is in fact a payment of the interest. We had spend 2 hours to find that law. It was at our expense and the taxpayer's expense, and not the expense of the Internal Revenue Service.

Senator DECONCINI. So eventually you prevailed?

Mr. WEISS. Yes. But we have 2 hours of time that taxpayer has to pay for.

Senator DECONCINI. That agent wasn't familiar with the law?

Mr. WEISS. Absolute not.

Senator DECONCINI. You had to convince them first the law was there and that your position was correct, and then they agreed?

Mr. WEISS. Yes.

Senator DECONCINI. This person gets paid. Your point is you shouldn't have to go through that process?

Mr. WEISS. And the Internal Revenue Service would operate more effectively.

Senator DECONCINI. Sure, good point.

Mr. WEISS. There are numerous cases, but it's along the same lines. If the agents again were selected to audit certain areas and educated in that area, I think we would all be better served.

CONTINUING NOTICES

The second area is the continuing notices. We live in an age of computers, and when a taxpayer is put on notice, the computer every 3 weeks spits out an additional notice, even though a response has been transmitted. That again, causes my clients problems. They pay me to take care of them, so they send those notices to me. I respond again. If there is some way at all to crosscheck those notices with the responses, we could stop the computers.

Senator DECONCINI. The second responses don't reflect the fact that——

Mr. WEISS. Not at all.

Senator DECONCINI. That you in behalf of your client have responded to the first one and are taking some steps to either have a meeting, or whatever?

Mr. WEISS. That is correct.

Senator DECONCINI. Whatever you may do to settle the matter, or even if you decide to pay it?

Mr. WEISS. That is correct.

Senator DECONCINI. So your point then is that your clients think that nothing has been done?

Mr. WEISS. Right.

Senator DECONCINI. And as far as Internal Revenue is concerned, nothing has been done, at least as far as that computer is concerned.

Mr. WEISS. My clients know something is done, I always send them copies of my letters and justification for my bill.

Senator DECONCINI. Yet they get another response from Internal Revenue Service indicating nothing has happened.

Mr. WEISS. More frequent than I would appreciate. I work in a department with six people, and one also almost full-time dealing with Internal Revenue Service and these notices.

We've gotten to the point where I have responses on our typewriter so they can just be spit out. At least to keep the costs down.

Senator DECONCINI. So your computer answers their computer?

Mr. WEISS. That's correct, I have a secretary that types the envelopes.

Commissioner Berry said with notice to procedures, once a collection department receives a case, then we don't have the ability to go and argue the law. Sometimes it's difficult. It might be a disputed issue in our mind that it's not a dispute in the IRS's mind. It's placed in collection when it shouldn't be there. It should still be at the field agent's level. There's more wasted time to get it back in the right position. I'm not really concerned who's right and wrong, it's just saving time in getting a resolution.

Like receiving seizure notices when in fact the taxpayer was correct.

TAX SHELTERS

Another area is the attitude toward tax shelters, which I know now President Reagan's statement is a touchy area, but seems that the IRS is out to attack the tax shelters, which are invested in by people who do report their income, and take advantage of the tax laws the way they are set. In my mind we'd be better off if the IRS puts their energy into those people who do not report their income. The underground economy in this country is substantial. There are billions of dollars of unreported income. I don't have any facts and figures. I'm sure you do. I think justice would be better served if the Service put their time in there. The tax shelters will take care of themselves with proper legislation. Once the abuses are determined and stopped. Generally, shelters occur because laws have been created to encourage investment in certain areas by way of tax benefits. If there is abuse in that area Congress can make the change in the law and stop those abuses.

DETERMINING ABUSES

Senator DECONCINI. How do you find the abuses without the Internal Revenue Service doing audits, or how are those abuses going to be——

Mr. WEISS. There could be some criteria established. They make a criteria to determine what is an abusive tax shelter. To go on further and litigate, because obviously the investors in the shelters are of means, and they will fight in courts and they will go on for 6 or 7 years. The money is not collected, even at 20-percent interest or 12-percent interest. If there are criterias established, let the same criteria be used to collect against. We have safe harbor leasing because there's fear of abusing. That was determined without examination. Maybe the same thing could be done in other areas.

Again, more emphasis, with the help of the courts, has to be placed on the complete evaders attack.

OFFSETTING REFUNDS WITH DEFICIENCIES

The last area I have is a technical one on the offsetting of refunds with deficiencies. Often clients, income is shifted from one year to the next with an offsetting deficiency in one year and a refund in the other. The attempt, they apparently go to two separate departments, the attempt is to make the taxpayer pay the deficiency, and then wait for the refund. There seems to me to be no administrative reason for that. We've asked in writing and during this period of writing, the notices continue and often that is where we see a seizure notice. When in fact there may be a refund in excess of the deficiency.

Senator DECONCINI. Do you find in your practice any growing resentment of Internal Revenue, and its unfairness or is it a pretty constant?

Mr. WEISS. Well, the tax shelter investors, whether they are true, to use the term really tax advantage investment might be a better term. Those are the ones that feel that they're being abused.

REFUNDING AND PAYMENT OF FEES

See, there is a position, I assume it's somewhere in the region, that say that, for example, I have a client waiting for an $18,000 refund. There has been no deficiency against him, nor are his returns under examination, but investments he made are being examined, and therefore his refund is not being given to him.

There is no deficiency, so there's a presumption of guilt, yet his refund is withheld.

Senator DECONCINI. What is the response you get from Internal Revenue?

Mr. WEISS. Procedure. There may be a deficiency. We have to protect ourselves. We cannot refund the money.

Senator DECONCINI. They have the authority to do that, under their promulgated rules.

Mr. WEISS. What right do I have to go to court? There is no provision for a repayment of fees when you sue the Internal Revenue Service.

Senator DECONCINI. Under the Equal Access to Justice Act——

Mr. WEISS. Only if you go.

Senator DECONCINI. You have to go to the tax court.

Mr. WEISS. In tax court you don't recover.

Senator DECONCINI. You'd have to go to the district court.

Mr. WEISS. At the administrative hearing you don't recover.

Senator DECONCINI. There's legislation, by the way, that Senator Baucus and I are pushing to include that part of the process.

Mr. WEISS. Yet you know in formal court action, negligence cases, the guilty party pays.

We've often gone to appellate division where we find the more sophisticated agents resolve some of the issues that should never have been issues. If it comes out in the taxpayer's favor, I have difficulty saying, "Here's a bill for a thousand dollars, there's no change in your tax return." So he has to prove himself right.

Senator DECONCINI. Thank you very much, we appreciate it.

LETTERS FROM KENNETH L. WEISS, CERTIFIED PUBLIC ACCOUNTANT,
LAVENTHOL & HORWATH, TUCSON, ARIZ.

June 17, 1982

Mr. Lou Kunzler
Internal Revenue Service
301 W. Congress
Tucson, Arizona 85701

Dear Lou:

This letter is written to expand on a quotation that appeared in the Arizona Daily Star the morning after my appearance before Senator DeConcini's Senate Committee Hearings on the IRS. The newspaper quoted me as saying that inexperienced office and field agents cause the taxpayers extra money. The implication from that quote was that all agents are inexperienced.

I want to clear the record that I don't mean that all agents are inexperienced. However, I'm sure that you will agree with me that there are inexperienced agents who are not conversant with tax law and are raising issues or imposing deficiencies that are not based in law. These unfounded issues cause the taxpayers money either because they are paying a tax they should not pay or they are paying a representative like myself to defeat an unfounded claim.

My concern was that the Senate is considering budget cuts for the IRS, and if there are budget cuts, then the educational process of the IRS will be cut back. If the training of the agents is reduced, we will have more inexperienced agents and, therefore, they will be required to learn on the job. I'm concerned about that because, as a representative of taxpayers, I have to deal with technical issues with people who are not familiar with them. Therefore, these new inexperienced agents, who will result because of the reduced funding and lack of education, are going to cost my clients more money during examinations because of the time we will have to spend in training those agents.

I hope that this will clear the area so that you and members of the Service will understand what I meant by what I said to Senator DeConcini.

Cordially,
LAVENTHOL & HORWATH

Kenneth L. Weiss

September 7, 1982

Mr. Lou Kunzler
Internal Revenue Service
301 West Congress
Tucson, Arizona 85701

Dear Lou:

By this letter, I hereby grant permission to add my personal letter dated June 16, 1982 to the Congressional record as an expansion to my testimony before Senator DeConcini's hearings. As you will recall, the letter was written as an expansion to you and local members of the Internal Revenue Service because of a rather limited and possibly misunderstood quote that appeared in the local Tucson newspaper.

Thank you for your cooperation in this matter.

Cordially,

Kenneth L. Weiss

STATEMENT OF DR. CHARLES W. PARK

TAX AUDITING

Senator DECONCINI. We'll now hear from Dr. Charles Park.

Dr. Park, we have a waiver here in case you mention a particular case, if you want to sign it for us. We don't want to inhibit your testimony, but we need to have a statement signed.

We'll give you a copy of it if you'd like.

Dr. PARK. I'd like to have a copy.

I appreciate the fact that I'm not going to be inhibited.

Senator DeConcini, Mr. Chairman, ladies and gentlemen, it is my understanding that the oversight committee of the Appropriations Committee of the U.S. Senate is here in Tucson to receive constructive criticism and/or complaints regarding the Internal Revenue Service. I am Charles W. Park, a medical physician, specialist in the practice of internal medicine in Tucson, at Green Valley. I'm accompanied here by my wife, Georgia Park, who has been my business partner and is responsible along with me for the critique which follows.

From 1958 until 1972, I conducted with the assistance of my wife a group practice of medicine in the western suburb of Detroit, Mich. Ultimately in the 1970's, I expanded to establish a large mobile specialty medical center of 110 bed general nonprofit hospital directed by a nine member board of directors, including the mayor of the city of Leslan. Georgia Park, my wife, and I served on the board of directors and served on the clinic and hospital staffs according to corporation statutes and bylaws.

The hospital was fully accredited by the Joint Commission of Accreditation of Hospitals and rendered medical service to the local community.

In 1972, these facilities were combined with Metropolitan Hospital and Clinics and now is combined with the Henry Ford Hospital Clinic, and the University of Michigan Health Services.

In 1972, we purchased two buildings nearby in the city of Dearborn Heights. After much improvements we moved my sole practice of internal medicine to these facilities. Because of the location of medical service, the health needs of my diabetic son, and the health needs of my wife, I obtained medical license to practice medicine in Arizona, and moved to Tucson in August 1974.

Along with the move to Arizona and closing of the general hospital, we were obliged by law and medical respectability to preserve the hospital and clinic, full-time related obligation to the present time.

In 1978, Mrs. Park and I gave our two buildings and property to the city of Dearborn Heights for their use in the drug and abuse program.

SETTLING AUDITS OF 1970–72

The MAI evaluation of this property was in excess of $250,000. The taxes of Charles and Georgia Park have been audited 9 out of 10 years from 1969 through 1979. Why? The audits of 1970, 1971, and 1972 were reviewed by about eight agents in the Detroit IRS

office in 1971 and through 1978. These IRS agents fabricated and misrepresented details, alleging that we had not paid taxes on about $200,000 on the money we received as rent from the nonprofit hospital, for the use of the building. Either the eight IRS agents were grossly incompetent or conspirators, because they had full access to the records for 7 years. During this time we employed the services of three C.P.A.'s, one formerly from the IRS, and three tax attorneys, one also from the Justice Department. We initially settled the audits of 1970, 1971, and 1972 in 1978 for about $28,000, plus interest, approximating a little over $42,000. After the IRS agents fraudulent representatives were uncovered by my wife, taking the 1040 forms for these years, bank statements of the hospital, clinic, and proving that the respective injuries were substantiated and taxes had been paid.

When our Michigan tax attorney, Robert G. Surrage, presented this evidence to the Michigan IRS agents, they immediately pointed their fraudulent case to the Ogden, Utah IRS office, which was finally settled in Tucson in 1978.

AUDITING OF RETURNS FOR 1974–76

In 1979 Charles and Georgia Park were notified that the tax years for 1974, 1975, 1976, and 1977 would be audited by IRS Agent James Borgins, who we found to be allegedly a non-C.P.A. accountant. Mr. Borgins in his initial conference with our C.P.A., Mr. Richard Immick, after looking at our cumulative records announced he was going to reject all business records for continuing medication, business travel "because Dr. Park came to Arizona to retire and not to practice medicine."

At this point Mr. Immick took exception to Mr. Borgins' assurance. Mr. Borgins then stated that if he "couldn't make this stick that there would be no amount of proofs that he could accept for substantiation of the tax deductions."

It was apparent that Mr. Borgins had a closed mind and was merely an inquisitor seeking brownie points and/or bonuses.

REQUEST FOR INFORMATION

We appealed the position taken by Mr. Borgins to his superior, Mr. Ronald Robinson, allegedly a former policeman and made-over inquisitor euphemistically referred to as an IRS appeals agent. Our C.P.A., Mr. Immick and our attorney, Mr. Daniel O'Conner presented appropriate documents with legal precedent and case reports supporting our tax deduction position. Mr. Robinson in a typically cynical manner of a secure inquisitor refuted categorically all claims for tax deductions without providing appropriate accounting, legal, or case study data. We have sought under the Freedom of Information Act to have copies of all reports, memorandums, tapes, minutes of conferences, et cetera, for the years 1970 through 1979. The IRS has yet produced all the documents and where possible they are rejecting to produce some of their data because it allegedly is adjacent to other taxpayers' data. We should all insist that these documents be produced for our inspection, and copies for the court.

INSTALLMENT AGREEMENT

In August 1979 Mr. Joseph Garwood of the IRS collection arm in the Tucson office entered into a valid Department of Treasury Internal Revenue Service installment agreement, form 433D revised June 1978, with Charles and Georgia Park to pay $28,000 plus interest at the rate of $750 per month until the amount was paid in full. Mr. Garwood placed liens against all of our properties which gave ample protection. The Parks dutifully paid the monthly obligation for 2 years, until August 1981 whereupon Mr. Garwood claimed dismally after establishing that Charles and Georgia Park, the taxpayers, Mr. Richard Immick, the C.P.A., Mr. Fred Luety, that the tax attorneys were out of the State, did without previous notice, arbitrate by trial, accelerate the tax payment without choice and posted levies against the two properties of the Parks in Green Valley. Subsequently Mr. Garwood sent a certified letter to the Parks' home in Tucson, knowing full well that the Parks and their tax professional representatives were out of the State. Upon the arrival of the certified letter it was returned to the post office and notice that the certified letter was placed at our home. Fortunately my visiting daughter rendered the IRS letter and called Mr. Garwood. My daughter, Carol Park from the University of Arizona; an attorney-C.P.A., now a Federal attorney, was advised in infinite detail what a certified letter was, that it was a little confidential, that the IRS installment agreement was not in default, that it was merely a message from his office for the taxpayers. He further stated that there was no need of calling us, our accountant or our tax attorney, and for her not to worry about it. In the meantime, Mr. Garwood proceeded to levy against our two Green Valley properties, and when we returned to Tucson urging us to have our properties appraised by a specific realtor of Green Valley, whom he had previously contacted rather than an MAI appraiser. Why did they have this bias? These levied properties were where I practiced in Green Valley. This was not only embarrassing but also damaging. Suffice it to say we, the taxpayers, our C.P.A. and tax attorney were chagrined that out allegedly valid installment form agreement, form 43G was not in default, but was a worthless costly piece of paper, a fraud perpetrated by the IRS agents, and condoned by their superiors.

I have a copy of that here which I should like to submit. I understand that some of the offices have had a hard time getting that, but there's a copy of it.

Senator DECONCINI. We'll accept that for the record.

[The agreement follows:]

Form 433-D (Rev. June 1978)

Department of the Treasury - Internal Revenue Service

Installment Agreement

Name and Address of Taxpayer(s)	Social Security Number(s)	
Dr. Charles W. Park Mrs. Georgia B. Park 450 S. Via Golondrina Tucson, Arizona 85716	Georgia B. Park [illegible]	
	Kinds of Taxes/Forms (Individual) 1040	Check (As appropriate) ☑ Individual
	Tax Periods Ending 12/31/72	☐ Corporation
	Amount of Tax Owed $42,749.63	☐ Partnership

The undersigned agrees that the Federal taxes shown above, plus any interest and penalties provided by law, will be paid as follows:

$ 750.00 to be paid on September 15, 1979 and $ 750.00 to be paid on the 15th of each month thereafter until the liability is paid in full and also agrees that the above tax installments will be increased as follows: N/A

Date of Increase					
Amount of Increase	$				
New Installment Amount	$				

Conditions of This Agreement:

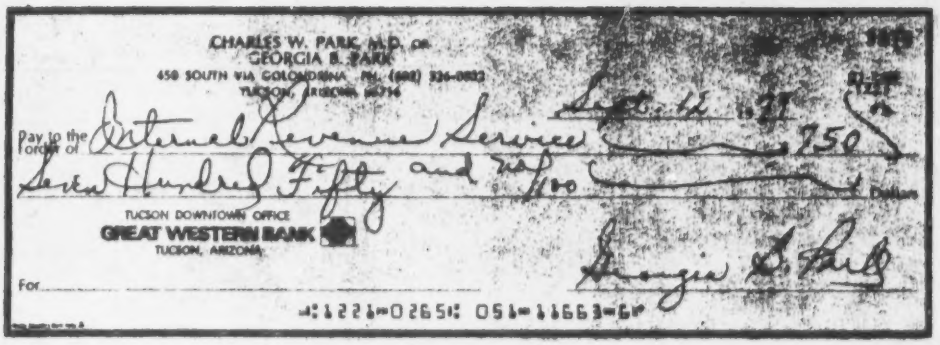
- All Federal taxes that become due during the term of this agreement will be paid on time.
- All Federal tax returns that become due during the term of this agreement will be filed on time.
- Until this liability is satisfied, any refunds that might otherwise be due will be applied to this liability.
- If the conditions of this agreement are not met, or if it is determined that collection of these taxes is endangered, permission to make installment payments may be withdrawn, and the entire tax liability may be collected by levy on income or by seizure of property.

Additional Conditions: "Taxpayers currently are under examination for 1040's for the tax years ending 12/31/74, 12/31/75, 12/31/76 and 12/31/77. It is understood that this condition does not preclude the possibility of an installment agreement to cover payment for any taxes owing for such years, nor the possibility that the agreement can be modified to cover any such additional tax owing for such years.

Your Signature	This (If corporate officer or partner)	Date	For Assistance, Contact
Charles W. Park	N/A	9/8/79	Joe Garwood
Spouse's Signature (If joint income tax return)		Date	Telephone:
Georgia B. Park		9-8-79	792-6313
Agreement Examined and Approved by (Signature)		Date	Interviewer
			Joe Garwood

General Information

Employer (Name and address)	Taxpayer's Telephone Number
Self-employed - M.D.	Home: 326-0022
Banks (Names and addresses)	Business: 886-8581
See financial statement	
Notice of Federal Tax Lien Filing Determination (Check one)	Payroll Deduction (Check one)
☒ Notice of tax lien filed	☒ Not applicable
☐ Notice of tax lien to be filed - taxpayer notified	☐ Taxpayer declined
☐ Notice of lien not required	☐ Employer declined


CHARLES W. PARK, M.D. OR
GEORGIA B. PARK
450 SOUTH VIA GOLONDRINA PH. (602) 326-0832
TUCSON, ARIZONA 85716
Pay to the Order of Internal Revenue Service $ 750
Seven Hundred Fifty and no/100 Dollars
TUCSON DOWNTOWN OFFICE
GREAT WESTERN BANK
TUCSON, ARIZONA
For
Georgia B. Park
⑆122105265⑆ 051-11663-6

BINDING THE IRS TO A CONTRACT

Dr. PARK. Who has the power of binding the IRS to a contract short of Commissioner Egger? Why does IRS issue fraudulent IRS installment agreements if they do not have the power to bind IRS to them? Is this condoned by the tax courts, the Federal courts and Congress? If so then we should use proper nomenclature and call the IRS agents more correctly by the title, "investors."

"The person who conducts an official inquiry with little or no regard for individuals' rights, or with undue harshness, bias or severity, usually lacking equivalent training, professional quality, and ethics."

Are the taxpayers or small business persons, the legal, the accounting, and medical profession in the hands of the inquisitors of the Middle Ages? Or are they Fascist or KGB clones?

I'm going to refer to and submit for the record an article called "Excesses of the IRS, a National Disgrace," by Senator Laxalt; and I have a copy of this. As was recorded in a 1980 Washington report, before a Senate subcommittee, held on IRS activities: "Congress must reexamine the action and policies of the IRS in detail. We appear to be witnessing an agency totally out of control, running roughshod over taxpayers and making a joke out of our rule of laws. The cases of abuse are easy to document and too numerous to count, but before long we must or we will see a tax revolt grow in full scale revolution." The article will be inserted in the subcommittee files.

ALLEGATION OF NONFILING OF RETURN

During the review of our 1970, 1971, and 1972 taxes, our certified public accountant, Mr. Immick, recalculated our taxes and established that we should have a refund for the year 1965. When this was requested, it was rejected. After the Tucson IRS office alleged that they had made a thorough check, because they could not locate the form 1040 for 1965. They then falsely accused the Parks of not filing their 1965 taxes. A copy of our 1965 form 1040 was obtained by our Michigan tax attorney, Mr. Robert Surrage, from our Michigan certified public accountant who was the former IRS certified public accountant, Nathaniel Fellows, and submitted to the IRS Tucson, Ariz. officer. This copy was refused, and the IRS proceeded to press the charge of "not filing of taxes," notwithstanding

the proofs for tax years 1964, and 1966 had been accepted. Thereupon Mrs. Park was able to locate quarterly reports and canceled checks for 1965 after much effort. And then a copy of the form 1040 was sent. Why did the IRS lie and state that they had made a thorough search of their files and make a fraudulent charge against the Parks for nonfiling of form 1040 for 1965?

We have a copy of a letter from the Tucson IRS officer acknowledging the falsity of their charges. The refund was finally paid. Why is there no punishment and fines against felony by the IRS agents?

RELIEF AGAINST ERRONEOUS CHARGES

Noncongressional monitoring of the IRS should be expected to result in possible internal conspiracy to defraud taxpayers and cover up felonies by IRS agents. Prior hearings in Federal court as an option might stipulate more ethical behavior by IRS agents.

What justice is there to wantonly make charges against the taxpayer without proof? To enforce penalties without fair hearings, to operate a bureau of IRS without the right of redress for unwarranted damages and cost? Our only relief appears to file in Tax Court wherein the agents may right the decision, or the taxpayer must pay the exorbitant taxes on claims by the inquisitors allegedly recruited from ranks of ex-policemen, or noncertified public accountant accountants and file in the Federal court. It certainly appears it is a definite deterrent to keep the taxpayers out of the Federal court and therefore the IRS has complete control. Has fraud, conspiracy, and extortion become a part of our tax system? If it is then it must be a cover to destroy or subjugate small business, lawyers, accountants, physicians in private practice, and has become taxation without appropriate representation by our Congress.

PAYMENT OF CLAIMS PRIOR TO COURT HEARING

Is not the bureaucracy a product regulated by Congress? Or is the IRS a bureau that has run amuck and neither the Congress nor the public can control it? In 1981, the audits of 1978 and 1979 were commenced and completed by Mr. Klingler, Larry Klingler. Mr. Klingler accepted the proofs that I had not retired, and in fact was practicing in Tucson and Green Valley. He accepted my deductions for continuing medical education, business travel, and expenses. However, he developed other wrinkles. Arbitrarily he refused our MAI reports of $250,000 for our charitable contribution of our two buildings and property to the drug and abuse program and the city of Dearborn Heights, Mich., in 1978. Based on the IRS field engineer's report, who must have been recruited from the sanitary department, another nonequivalent pal for professionalism. Needless to say we are in the process of filing in the Tax Court for a hearing. We would prefer a Federal court hearing where we then file for relief for damages and costs for the 10-year witch hunt by the IRS inquisitors. Again our laws have permitted an abortion of justice by condoning excessive unproved taxation claims which must be paid before a taxpayer files in Federal court.

Your Honor, Senator DeConcini, when will the Senate change our medieval religion so that the taxpayer can fairly settle tax dis-

putes filed by our certified public accountant's and tax attorneys, that performing their duty conscientiously, professionally, ethically. When will IRS employ professionals rather than inquisitors.

Respectfully. [Applause.]

Senator DECONCINI. Dr. Park, we appreciate the sentiments of the audience here, but we're not here for the popularity of one side of an issue. But I do want to thank you, Dr. Park, for being here. I know as a matter of record of your professional career, since you moved to Arizona and Green Valley. I could have told the IRS that I know that you practice there, because I know some of your patients.

I'm glad to have this testimony, and though you have a pending case, I'm going to look carefully at your testimony and be sure that this is submitted to the IRS for some answers to questions that you've raised. We appreciate your being here today.

Dr. PARK. Thank you.

Senator DECONCINI. And Mrs. Park.

Mrs. Park, we'd like you to sign a waiver form, too, if we're going to do anything on this particular matter.

I have received some material from the Internal Revenue Service in response to the issues raised by Mr. Park. The material will be inserted in the record at this point.

[The material follows:]

TESTIMONY REFERENCE

Issues: Dr. Park claims that Internal Revenue Service agents have fabricated and misrepresented details alleging that he did not pay taxes on about $200,000.00 of rents received from a non-profit hospital.

He also claims that the Internal Revenue Service has falsely accused him and Mrs. Park of not filing their 1965 tax return.

Dr. Park asserts that during the audit of the 1974, 1975, 1976, and 1977 returns the Internal Revenue Service agent would not allow expenses claimed for continuing education, and business travel on the grounds that Dr. Park came to Arizona to retire and not to practice medicine.

Dr. Park contends that in 1981, the Internal Revenue Service commenced examination of their 1978 and 1979 returns. The revenue agent arbitrarily refused the MAI appraisal report of $250,000.00 for the charitable contribution of two buildings and property donated to the drug and abuse program and the city of Dearborn Heights, Michigan.

Dr. Park stated that he has requested under the Freedom of Information Act to have copies of all reports, memoranda, tapes, minutes of conferences, etc., for the years of 1970 through 1979. The Internal Revenue Service has yet to produce all the documents and where possible is refusing to produce some of this data.

Dr. Park further claims that about eight different revenue agents have examined nine out of the ten years' tax returns filed between 1969 through 1979.

Dr. Park claims that the Internal Revenue Service entered into a "valid" installment agreement for the payment of $28,000.00 plus accruals at $750.00 per month until fully paid. Two years later, they claim that Internal Revenue Service arbitrarily withdrew the payment agreement and seized property to collect the total due.

(Dr. Park's case is complex because of the number of issues raised and the relatively lengthy time frame involved. The following response was developed based on a reasonable review of the available records.)

Response: The 1970, 1971 and 1972 returns were examined in the Detroit District. The case was subsequently sent to the District Conference Staff in the Detroit District. By letter dated August 31, 1977, the taxpayers' Detroit representative requested that the case be transferred to Tucson, Arizona office where books and records were stored and where Dr. and Mrs. Park then resided. The primary issue concerned the receipt of funds owed to Dr. Park by Parkvue General Hospital. The case was assigned to a Tucson revenue agent on June 7, 1978.

An analysis of the loan account regarding loans to Parkvue General Hospital by Dr. Park disclosed unreported rental payments made to Dr. Park by Parkvue in 1972 in the amount of $15,744.00.

In addition, it was determined that the Parks failed to report rental income from Parkvue of $35,646.36 for 1969. The statute of limitations had expired on the 1969 return, so that an adjustment of $35,646.36 could not be made in full. since a net operating loss was available for carryback from 1971 to 1969 the loss was offset by an income increase of $15,721.00, the extent allowable.

During the examination of the 1971 return, it was determined that a net operating loss existed which was required to be carried back to 1968. By carrying back this loss to 1968 the revenue agent was required to carryback to 1965 investment tax credit arising in 1968.

Microfilm research of the taxpayers' 1965 tax account did not reveal a filing of the 1965 tax return. Accordingly, the revenue agent requested a copy of the return and canelled checks from Dr. Park. The agent was provided with copies of the 1965 return and cancelled checks showing payment and the report was processed on this basis.

A summary of the audit results for 1970, 1971 and 1972 with carrybacks to 1965, 1968 and 1969 are as follows:

	1965	1968	1969	1970	1971	1972
Increase in tax	0	0	0	0	0	$44,512
Decrease in tax	$722	$5,834	0	$6,436	0	0

The report reflecting the above tax deficiencies was signed and agreed to by Dr. and Mrs. Park on November 29, 1978.

Independent of the 1970, 1971 and 1972 examinations being concluded by the revenue agent, the 1974, (late filed), 1975 and 1976 returns were computer selected for examination and assigned to another revenue agent in August 1978. During his examination, the 1977 return was inspected by him and retained for examination after audit adjustments were determined to be present. Several issues were raised in regard to the amounts claimed as deductions. One of the items adjusted was an account titled, "Education, Travel and Public Relations." The amounts disallowed in this account reflected improper deductions for gifts and travel. The amounts claimed for continuing education were allowed in full by the revenue agent.

Another issue raised by the revenue agent was that Dr. Park was not in a trade or business from August 1974 to December 1977, except to work for wages in 1977. Income reported on Dr. Park's business Schedule C during the years 1974 through 1977 consisted primarily of collection receivables earned in Michigan prior to August 1974. Accordingly, business travel expenses were disallowed.

The case was forwarded to the Regional Appeals Office and a hearing conducted with the taxpayers' representative. The revenue agent was sustained in full. A statutory notice of deficiency will be issued at which time Dr. Park will be afforded the opportunity to present their position before the tax court.

The examination results for these years, as revised by the appeals officer, are as follows:

Increase in tax:

1974	$6,373
1975	3,276
1976	12,174
1977	21,538

The 1978 return was computer selected for examination and assigned to a revenue agent on August 15, 1980. The agent subsequently resigned from the Service and the case was reassigned to another revene agent in December 1980. During the examination, 16 audit issues were raised with regard to items deducted on the 1978 tax return. One of these issues involved the value of a medical center building donated to a drug abuse center in Michigan.

The donated building was valued at $248,000.00 on the tax return. An appraisal report and a synopsis letter by another appraiser were attached to the return. Dr. Park reported the medical center as a bargain sale with the drug abuse center assuming a loan of $117,911.00, $4,486.00 recaptured as ordinary income and the balance, $125,603.00, shown as a contribution. The deduction for 1978 was limited to $33,096.00 with the balance to be carried forward to subsequent years. An Internal Revenue Service engineer appraiser valued the property at $125,000.00 with

$4,486.00 recaptured as ordinary income and $3,103.00 allowed as a contribution deduction. Since the fair market value of this contribution was not determinable by the revenue agent, it was appropriate to obtain the assistance of an engineer appraiser.

The 1979 return was selected for examination because Dr. Park was a partner in a tax shelter partnership under examination in the Austin District. Eighteen issues were appraised during the examination of the 1979 return with some issues being a carryover from the prior year.

The 1980 return was computer selected and the examination was limited to items that were adjusted in the prior year and not further field work was conducted; however, all unresolved issues from 1979 which continued in 1980 are being adjusted on the same basis. The examination of the 1978, 1979, and 1980 returns are still under examination at the revenue agent level.

The taxpayers' representative submitted three Freedom of Information act requests during March and April 1982, on behalf of the taxpayers for the years 1970 through 1972 and for the years 1974 through 1979. The Disclosure Office provided 556 documents in response to the request within the statutory response period. Additionally, the representative was advised of the procedure to exercise the taxpayers' appeal rights for the documents determined to be exempt from disclosure pursuant to 5 USC 552(b).

There were eight different revenue agents, conferees or appeals officers who worked on the Park returns for 1965 through 1980. Internal Revenue Service Policy Statement P-4-5 states in part "an examiner may not survey or examine a tax return if he/she has surveyed or examined a return of the same taxpayer for any of the three preceding tax periods unless there has been an intervening survey or examination by a different examiner." If a tax return is under examination in accord with this policy, returns for previous or subsequent tax periods may be examined simultaneously by the same examiner.

Examination assignment of the Parks' return was reviewed. Policy Statement P-4-5 was not violated.

In November of 1979 Dr. Park submitted a proposal to pay $750.00 per month to liquidate an approximately $42,000 balance due for the year 1972. At about the same time, he applied for subordination of a tax lien to allow him to purchase property in Green Valley, Arizona. He had paid a deposit of approximately $19,000.00 on the property which would have been forfeited if the escrow did not close. The subordination was granted. The Internal Revenue Service did not approve the installment agreement but did accept payments until December of 1980 when a re-evaluation of the ability to pay and status of Dr. Parks real estate was to be made. Negotiations with Dr. Park and his representative continued until February 1981 when he was requested to complete a new financial statement and submit a plan to fully pay the liability prior to April 6, 1981.

By July of 1981, the revenue officer had still not received a new financial statement or a plan for payment. The balance due on the account at this time was approximately $27,000.00 and concrete efforts had not been made to resolve the tax liability by liquidation of real estate holdings or by submitting a new financial statement to the revenue officer. Based on this lack of action to resolve the liability and the fact that Dr. Park failed to indicate at any time that the property in Green Valley was being used as rental property with no income (or loss) being reported on a previously submitted financial statement, a decision to enforce collection was made.

The rental property, rather than the personal residence, of the taxpayer was seized for non-payment of $27,256.07 then due. Minimum bid negotiations were made through August of 1981, when the taxpayers' attorney made a proposal for payment of approximately $10,000.00 for release of seizure with the balance due to be paid from an escrow on other property located in Michigan. On November 5, 1981 the Internal Revenue Service received $9,940.00 and the seizure of the real property was released. On January 5, 1982, the Internal Revenue received $12,241.01. On February 12, 1982, full payment was received and the Federal tax lien was released.

NOTE.—Dr. and Mrs. Park signed waivers authorizing the Internal Revenue Service to disclose their returns, return information, and taxpayer return information, for all tax years.

STATEMENTS OF MR. AND MRS. LEO SHUSTA

AUDITING OF RETURNS

Senator DECONCINI. Our next witnesses are Mr. and Mrs. Leo Shusta. If they'd come forward, we'll ask them to also sign a waiver form.

I must remind each of the witnesses that 15 minutes is our maximum, because of time schedules; and any other information that you want to submit to us that we do not get to today, we'd be glad to include it in the record. We'll set a clock here for 15 minutes to remind you.

Mrs. SHUSTA. I'd like to thank you very much for having these hearings, I didn't realize the public was allowed to come forward and air their angers with regards to an agency which really, as the man put ahead of me, runs amuck.

Senator DECONCINI. That's why we're doing it.

Mrs. SHUSTA. In 1974 we were audited on our 1972 return in three areas.

This audit resulted in a mistake that we had made in our moving expenses. We are allowed 30 days, not 60 days. The agent after reviewing the three areas said, "Why don't we examine the balance of your return to see if there's any further discrepancies?" Which took about 5½ hours of our time, and resulted in the IRS collecting $39.56.

Since 1974 we have been audited "randomly" five separate times. The latest one was yesterday.

In 1977, our 1975 return was brought in for review. The examiner informed us that he did not normally deal with individual returns, his area was business, but that he was doing us a favor by reviewing our return, rather than have us come back when a qualified individual tax examiner could be available.

He examined the two areas that were in question, found our receipts, and determined them to be complete and justified for the things that we were requesting. He then leaned back in the chair and said, "Well, while we're at it, why don't we examine the balance of your return?"

And I said, "Why? We already presented what we have presented to you, why is it necessary?"

He said, "Look, Mrs. Shusta, we can either do it now, or we can do it later, it makes no difference to me. You want to come back down here, fine. Or we can continue it."

We sat there for another 5 hours. There was no change on our return for that particular examination.

We were again requested in 1980 to have our 1977 return examined. We insisted at that time that the office manager sit down and do our return, and also for an extension because we felt that we should have copies of all of the previous audits so that we could substantiate what is being done to us.

ALLEGATIONS OF VIOLATIONS OF RIGHTS

Well, we got copies of the audit for the previous returns. But the things that were made out did not show that we had had total and

and complete audits. They only showed that we were audited on the items requested.

Now, information has come to us now that we find out that we didn't have to sit there and be examined for our entire return, and that our rights as a taxpayer were violated by these two individuals. But that's neither here nor there, there's a lot of violations going on.

So in 1977 Mr. Howard examined our return.

Senator DECONCINI. Just for the record, Mrs. Shusta, what business are you and your husband in?

Mrs. SHUSTA. I am a homemaker and my husband is an engineer for the railroad.

Anyway, Mr. Howard examined our return, he covered the areas that were requested, and found out that after examination they owed us $50.02 more on our return. We got the $50.02. We didn't get interest by the way. There was no interest collected.

AUDITING OF RETURNS

Mr. Howard at that time said he didn't understand why if my records were as we presented, so intact and so neat and so everything in the previous audit, why we were being audited again. My husband at that time asked him "What's the little code number after our name on top of our name" meant. And he said he didn't know what the computer code number meant, so we were just wondering whether our name has had a code number that every time they have a random audit of 2 percent and the fact that we happen to fall into it. And he said there was no substantiation that we had been audited now for the third time in 4 years on our return. So he said he'd see what he could do.

In 1980 another request for our 1979 return to be audited was requested. This time we went through the roof and said we were absolutely positively not going to be subject to another audit, so we were advised at that time that they would take our return under "close surveillance." We never heard another thing from them, until February of this year when they examined our 1980 return. And more than likely from the things that have happened to us yesterday, we will probably end up in litigation with regard to this.

The 1980 return that was examined yesterday, we were advised that although the law states that you were allowed up to $25 a day for expenses on out-of-town travel, that this particular district only allows you $9. And that therefore they are disregarding all of the trip sheets which are computer printout by the company, showing my husband's traveling to his job, how long he stayed there and when he returned. They were not acceptable to IRS. This particular agent likes a little hardbound book, it's called, "A Trip Book" and she said that if we had this to substantiate that he did spend $3.51 for breakfast, $2.28 for lunch, that she would accept that. And he said to her, "Well, that's just me entering in there, it's not canceled checks made out to the restaurant for a certain amount of money"; she said, "Well, I'm sorry, but we don't accept them." So needless to say, we are now wiped out. We were claiming $10 a day, and at this point right now they wiped out all of our receipts

and everything that we presented to them as not acceptable, by this individual. And we will probably go through the motions.

INTERPRETATION OF LAWS

I didn't realize that Congress makes laws, and I was informed yesterday, but that even though Congress makes the laws on taxes, that the individual districts can arbitrarily in their tax courts change the laws to suit whatever their particular needs are. In Arizona it is $9 per trip, even though the law specifically states that you have up to a maximum of $25 a day as long as you can show that you were in fact in this place at this time. And the checks by the way were made out to the restaurant itself.

Mr. SHUSTA. The problem was that the checks had been made for an exact amount, for specifically $20, and the question came up that they couldn't be sure of the fact that I spent the overage on the check, over and above the meal on something like beer or something else. So if I happen to go out of town and cash a check for $20, in Yuma, or in Lordsburg, N. Mex., to pay for my meal, then I'd use the additional cash to spend for other means while I was in that city. The log sheets I had showing when I was in that city and the canceled checks made out to that restaurant on that specific date, for that amount were not acceptable.

AREAS OF AUDITING

Senator DECONCINI. They counter that they had to have itemization for each meal?

Mrs. SHUSTA. She just wants a book.

Senator DECONCINI. Just your own longhand book.

Mrs. SHUSTA. Right.

Mr. SHUSTA. I said I know of individuals who go ahead and enter these figures in, but these are figures that they actually create.

And I was talking about our audits and the fact that in the past—actually in the last 9 years we have been selected for audit five times. We've had four audits, two complete and two partial. I was trying to get a definition of what I felt was excessive and repetitive, and they told me that, it's not excessive if they audit you on a different item each and every time. So I said, some of the areas that they can audit you on, they can audit me every year on a different item for every 30 years and it would not be considered excessive, and the agent said, "That's exactly right."

Mrs. SHUSTA. So that's our thing.

Mr. SHUSTA. We think we made a mistake back in 1972, and ever since then there's a computer that's got our name, every other year—as an example, this year they were auditing us on miscellaneous expense, which in my out-of-town expense, which constituted under 5 percent of my gross income. Last year because I was out of town more, and I was in California, my expense was in excess of 10 percent, yet that was not a question and that was not audited. So it seems.

Senator DECONCINI. Well, it hasn't been yet.

Mrs. SHUSTA. We figured that, this is only the beginning, Mr. DeConcini.

Mr. SHUSTA. Anyway, the auditor said they could be more selective than they'd like to admit to.

Senator DECONCINI. We thank you for coming forward.

I have received some material from the Internal Revenue Service in response to the issues raised by Mr. and Mrs. Leo Shusta. The material will be inserted in the record at this point.

[The material follows:]

TESTIMONY REFERENCE

Issues: The Shustas stated that their income tax returns have been examined five times since 1974. They believe this to be excessive and repetitive. The Shustas' 1980 tax return is currently under examination in the Tucson IRS office. The Shustas are in disagreement with the proposed subsistence allowance of $9.00 per day for those days Mr. Shusta worked away from Tucson on business.

Mr. Shusta asserts that the tax auditor did not accept receipts presented and stated that he must have a trip book and that log sheets were not acceptable proof of expenses.

Response: Mr. and Mrs. Shusta are residents of Tucson, Arizona. Mr. Shusta is employed as a railroad locomotive engineer. His work assignments require him to travel to various locations such as Yuma, Lordsburg, Phoenix, Hayden and Nogales.

Mr. Shusta's statement that he was audited five consecutive years is incorrect. Service records show the Shustas' return for the year 1972 was examined and resulted in a $39.56 deficiency; the years 1973 and 1977 examinations resulted in no-change; the years 1974, 1975, 1976, 1978 and 1979 were non examined years.

The Internal Revenue Service has no desire to examine returns not clearly in need of examination, except in the case of special studies such as the Taxpayer Compliance Measurement Program.

Since neither the 1978 nor the 1979 tax returns were previously examined, repetitive examination procedures do not apply to the examination of the 1980 tax return. The taxpayers were informed of this, and an appointment was scheduled to examine the issues selected for examination which were interest expense and miscellaneous deductions included under itemized deductions on their tax return.

Mr. Shusta claimed travel expenses and meals under the miscellaneous category rather than as a employee business expense. He presented summary sheets which he stated were prepared for the examination. No diary, log or receipts were presented to substantiate these deductions. Mr. Shusta did present all wage and earnings statements for the year 1980 received from the Southern Pacific Railroad.

The trip summary presented total trips by destination. Expenses claimed were based on two days per total trip at $10.00 per day for a total expense claimed of $1,680.00.

The Southern Pacific Railroad reimburses employees for meals purchased while traveling at the rate of $2.75 for a trip of four hours or more and $5.50 for a trip of twelve hours or more. These reimbursements were noted on the wage and earnings statements, however, they were not included in the Shustas' tax return.

The tax auditor, using the information from the trip summaries presented by the Shustas, and their earning statements computed the allowable deduction as follows:

146 days eligible travel times $9.00	$1,314
Less Unreported Reimbursement	371
Deductible Expense	943
Claimed on Tax Return	1,680
Disallowed Employee Travel Expense	737

If a taxpayer does not have to account to his employer for expenses and excess expenses over reimbursements are claimed, an attachment to the tax return reflecting total claimed expenses reduced by employer reimbursements received is required.

The Internal Revenue Code, under Section 274 requires accurate and timely records must be kept of the exact amount spent for meals while temporarily away from the taxpayers' tax home. In the absence of these timely kept records, if the taxpayer has presented clear evidence he was in a travel status, but has not recorded the exact amounts spent, consideration will be given to the claimed expenses.

It is the District practice, in lieu of disallowing claimed expenses not substantiated by accurate and timely records, to allow an amount not to exceed $9.00 per day

in the first examination of a taxpayer. The purpose is to permit the taxpayer to become familiar with the accounting provisions of the law. In future examinations, no allowance will be made if taxpayer is not then in compliance with the record-keeping requirements.

All documentation presented by the taxpayer was utilized in verification of the interest expense deduction. An adjustment was proposed due to an error in the taxpayer's claimed deduction which resulted in a disallowance of $462.00.

The total adjustments were explained and listed on a Report of Individual Income Tax Examination Changes and given to the Shustas at the conclusion of the interview on June 1, 1982. Mr. and Mrs. Shusta have indicated disagreement with this report.

An informal conference with the Group Manager will be extended to the Shustas prior to closure from the District as the first step in the appeals process.

NOTE.—Mr. and Mrs. Shusta signed a waiver authorizing the Internal Revenue Service to disclose their returns, return information and taxpayer return information for all tax years.

NOTE.—As a result of the issues raised by the Shustas, the IRS National Office has undertaken a review of the regulations relating to Code section 274.

STATEMENTS OF MR. AND MRS. KENNETH BYRNES

LACK OF TRAINING OF INTERNAL REVENUE SERVICE AGENTS

Senator DECONCINI. Our next witnesses are Mr. and Mrs. Ken Byrnes.

Mr. BYRNES. Senator, your office has I think been made aware of some of the comments I wanted to make today, and to save some time and rather than reading a prepared text I'll try to get right to the points.

I agree with some of my predecessors here today on the lack of training and incompetence of many of the IRS agents, as well as some of their attempts at harrassment. I also fear what I have to consider as IRS trying to get even with me with some of the points we have refuted for the past 2 years.

Mr particular situation began with the producing of a theatrical motion picture and then continued through the audit of the partnership that financed that motion picture. We are not at the stage of my own personal audits.

LIMITED PARTNERSHIP

The points which would have to indicate an incompetent factor were the agent, the examiner and group manager involved in our case were that initially they considered the motion picture a limited partnership, which was solely a one-to-one write off, as an illegal tax shelter. That's very difficult for me to understand how anybody could interpret a tax shelter as a 1-to-1 writeoff.

The agent and his group manager lied, as to ever receiving a partnership tax return and the accompanying K-1's when it was personally handed to the examiner by the general partner of the partnership. The agent and his group manager attempted to disallow the depreciation on the motion picture which would have been the only way an investor could have written off his loss. The same local examiner and group investors attempted to disallow an investment tax credit, which all the legal partners were legally entitled to. Internal Revenue Service lost on both of those counts. We were then forced to go over the local supervisor's head to a supervisor in Phoenix who indicated to me that there was no way after about 1½ years that they could back up the local examiner's posi-

tion, that we had to continue to fight this battle and eventually resolve the problems of the situation where it was allowed, and also the investment tax credit.

EFFORTS TO IMPLEMENT A PENALTY

Nine days after the resolution of those two particular points, the local examiner attempted to implement a $21,000 penalty on the partnership for failure to file a tax return on time, or the filing of an incomplete return. That $21,000 penalty was abated by the problems resolution office, but, unfortunately, as far as I'm concerned for the wrong reason. The local examiner and his group supervisor proceeded to order 35 to 40 limited partners when the audit had not yet been completed and no firm determination made on the investment tax credit. When the partnership was finally terminated, the local examiner refused to state in writing that the audit was terminated, and from what I understand legally he has to. When I appeared at my first audit interview it was terminated when I attempted to ask a few pertinent questions of the examiner. When I arrived home that particular day I found awaiting me an Internal Revenue Service administrative summons ordering me to appear once again, along with all my books and records. And very strongly all of a sudden a 1-year audit multiplied into multiple audits. My second one under administrative——

Senator DECONCINI. When did the first one occur?

Mr. BYRNES. September of 1980. After the interview which I did attend, that day awaiting me when I returned was an administrative subpena, ordering me to reappear, which I did do.

My second audit interview was once again terminated after I tried to ask just one simple question. At a subsequent meeting, and in front of witnesses the group supervisor when asked of the sudden multiple year audits replied, "It must have been a typographical error."

I have substantiating documents here to indicate everything that I'm claiming at this time, and on that particular point, 1978 and 1979, the years 1978 and 1979 appeared about five or six times on the subpena, which really forced me to say it was a typographical error.

NOTICE OF DEFICIENCY

When I was asked to sign a special consent to extend the time to assess tax, Internal Revenue Service form 872A, in order to give Internal Revenue Service more time to complete my audit, and prior to the statute of limitation expiring, I did comply. Without any further contacts with Internal Revenue Service, my special consent was terminated very abruptly by way of a receipt of a 30-day letter. The 30-day letter, which is also known as notice of deficiency, indicated that not only were all my legitimate business deductions disallowed, but also five of my personal exemptions were disallowed. So just with one stroke of the pen I assumed I had no more family. Included with the 30-day letter was a report that contained one lie after another.

LETTER OF PROTEST

On April 5 I sent a written letter of protest and approximately 1 week later it was returned as incomplete, which was not. Finally still trying to properly comply with what I consider an abused system, I sent Internal Revenue Service an addendum to my original letter of protest; as of this date I have not heard back from them.

Senator DECONCINI. When was that sent?

Mr. BYRNES. That was sent, the addendum was sent on May 10.

Senator DECONCINI. Of this year?

Mr. BYRNES. Yes; with a copy to Mr. Berry, copy to you.

What really floors me more than anything else, I know, is the fact that the Internal Revenue Service stated in a letter, in which they returned my initial written letter of protest, that, and I quote:

> We are returning your protest so you can complete it as indicated by the items checked below. Please furnish the required within the next 30 days. An addressed envelope is enclosed, and so forth, thank you for your cooperation.

Now, for the items listed there are boxes. One thing that just totally blows my mind, pardon the expression, is "indicate whether you want the hearing with a member of our office and regional director of appeals." That is "x 'd."

On the first page of my written letter of protest it states, "I do hereby request a hearing in Tucson, Ariz., before a representative of Director of Regional Appeals of the Internal Revenue Service."

Now, the other three areas which were marked were also supplied in my original letter of protest. But I was simply trying to comply and in an attempt to maybe make some of these people totally understand what they're dealing with, I did supply them with this additional information.

I have to assume that action by the local examiner and the local supervisor—primarily because I did present my ridiculous story to the Tucson Citizen, which you have a copy of—was the only reason that it was done. I was suffering a tremendous amount of frustration in trying to get people who had no accounting background, who had no motion picture industry experience, to understand what they were dealing with.

Senator DECONCINI. The letter of protest, correspondence, and exhibits will be made a part of the record.

[The letter of protest and related correspondence and exhibits follow:]

TO THE DISTRICT DIRECTOR

OF INTERNAL REVENUE

In Re	)	
	)	
KEN and UNA KAY BYRNES	)	PROTEST
	)	
	)	

1. Protest and Request for Hearing

KEN and UNA KAY BYRNES ("BYRNES") hereby protest the Proposed Adjustment of tax liability against them pursuant to Form 4549-A attached hereto as Exhibit A and do hereby request a hearing in Tucson, Arizona before a representative of the Office of Regional Director of Appeals of the Internal Revenue Service. The information set forth below is furnished in support of this Protest.

2. Name and Address of Protesting Persons

Ken & Una K. Byrnes
6158 East Seneca
Tucson, Arizona 85712

Social Security No.'s : 055-28-2936
309-42-4076

3. Date and Symbols on 30-Day Letter

March 26th, 1982. No symbols included on letter see copy attached hereto as Exhibit B.

4. Taxable Periods Involved

Tax year ending December 31st, 1978 and tax year ending December 31st, 1979.

5. Items Protested

Ken & Una Kay Byrnes do not agree with the Adjustment of Tax Liability pursuant to Form 4549-A attached hereto as Exhibit A.

6. Statement of Facts

In March,1980, a Raymond Cardi was subjected to an IRS audit for the tax year 1978. The examiner, David J. Hevelone also initiated an audit examination of a limited partnership, Sweet Creek County War Investors, Raymond Cardi, General Partner, Ken & Una Kay Byrnes, limited partners. From March, 1980 through

July, 1981, Mr. Hevelone continued to conduct his audit examinations of the General Partner as well as the limited partnership. During this period of time, Mr. Hevelone attempted to : (1) disallow the entire depreciation on the film that was produced for the limited partnership, (2) disallow the Investment Tax Credit which was allowable by law, (3) initiate a $ 21,000 penalty against the General Partner and the limited partnership, (4) conduct audit examinations of all limited partners whose investments amounted to more than $ 3,000 each, (5) deny ever receiving a limited partnership tax return as well as the K-1's for each limited partner for the tax year ending December 31st, 1978, after being given this material personally by Raymond Cardi, General Partner, and (6) conduct an audit examination of the 1978 Federal Income Tax Return of Ken and Una Kay Byrnes.

Approximately fifteen months after the audits of Mr. Cardi and the Sweet Creek County War Investors began, Raymond Cardi asked Ken Byrnes to " please get this guy off my back ", referring to Mr. Hevelone. Being responsible for Mr. Cardi's involvment in the motion picture and subsequently in his losing more than $ 500,000 as well on the project, Mr. Byrnes was willing to assist Mr. Cardi in any way possible.

Mr. Byrnes proceeded to try and help Mr. Cardi accomplish the following : (1) have the depreciation, first disallowed by both Mr. Hevelone and his Group Manager, Louis B. Kunzler, and which every limited partner was legally entitled to, allowed, (2) have an Investment Tax Credit allowed, (3) have the $ 21,000 penalty abated by the Problems Resolution Office in Phoenix, (4) prove that the penalty imposed was initiated six days after they failed in disallowing the depreciation and Investment Tax Credit, (5) proved that Mr. Hevelone did receive the limited partnership tax return for 1978 as well as the accompanying K-1's which he previously denied. Furthermore, Mr. Cardi was told by Mr. Hevelone that the partnership audit was finally terminated, but when asked to confirm that in writing, Mr. Hevelone stated, " you don't need it in writing ". Subsequently, Ken Byrnes found out through the Problem Resolution Office in Phoenix, that notification of the audit termination has to be written. The audit was verbally terminated in August, 1981,

and as of the date of this Protest, the written termination notice has not been received.

Seeing that Ken and Una Kay Byrnes were to be audited by a man who was (a) less than truthful and (b) incompetent, a man who never believed any of the supportive material presented to him during the audit examination of the limited partnership and who was reversed on everything he attempted, Ken and Una Kay Byrnes were forced to protect themselves, as best as possible, and under the law.

When first notified of their personal audit examination, Form 4564 stated that they should bring all checking account records as well as all cancelled checks, all savings account statements and passbooks, all books and records pertaining to and substantiating for deductions on schedule "C" of the tax return for 1978 and copies of their 1977, 1979 and 1980 Federal Income Tax Return's. In an attempt at intimidation and/or harrassment, when asking for previous year's tax returns, Mr. Hevelone wrote, " your accountant is required by law to keep a copy, therefore you can obtain copys(sic) from him ". Sec. 6107(b)(1) of the IRC does not state this and once again, Mr. Hevelone was incorrect.

On August 21st, 1981, at 8:00am, Ken Byrnes proceeded to his audit examination appointment as scheduled as well as his bringing all books and records for 1978 as requested. The audit examination for the tax year ending December 31st, 1978 was terminated by IRS.

Upon his return home that day, Mr. Byrnes found waiting for him a Summons, to appear once again, at the IRS offices on September 1st, 1981 at 8:30am. All of a sudden and on the Summons, the periods stated for examination multiplied and Ken Byrnes was subpoena'd to bring every conceivable record imaginable for both 1978 and 1979 (a copy of the Summons is attached hereto as Exhibit C. Citations to be used on this point are : IRC 7605(b); Pacific Mills v. Kenefick, 99 F2d 188; U.S. v. Powell, 379 U.S.48 (1964); U.S. v. Coopers & Lybrand, 413 F Supp. 942; U.S. v. Williams, 381 F Supp. 492; Sherar v. Cullen,481 F2d 945. When asked of Mr. Hevelone's Group Manager, Louis B. Kunzler at a subsequent meeting, with witnesses present, " why all of a sudden a multiple year audit ", he responded, " it was a typographical error ". In reference to that state-

ment, 1978 and 1979 appeared in four different areas of the Summons and was signed by both Mr. Hevelone and Mr. Kunzler.

On September 1st, 1981, along with their books and records for both 1978 and 1979, Mr. & Mrs. Byrnes, along with a witness, kept their audit examination appointment under subpoena. When Mr. Byrnes was asked to turn over his books and records for both 1978 and 1979, he attempted to ask Mr. Hevelone some questions, as he had attempted to do at the previous audit conference, in order to protect his rights as best he could and the audit was once again terminated by IRS (transcripts of both conferences can be supplied).. ... U.S.of A., Rosalie Torske, Revenue Agent of IRS v. Kenneth D. Johnson, President of Phoenix Internal Medicine, Limited, CIV - 80-704 - PHX-WEC, U.S. District Court, District of Arizona .

On or around the 5th day of September, H.Joe Rodello,Broker, with whom Mr. & Mrs. Byrnes hang their licenses, was contacted by Mr. Hevelone and told that he would be out to inspect his records pertaining to the business transactions of Ken and Una K. Byrnes. Upon Mr. Byrnes being notified of this telephone conversation, he promptly prepared a letter dated September 5th, 1981 and sent it certified mail-return receipt requested to Mr. Rodello with a copy, sent the same way, to Mr. Hevelone, prohibiting Mr. Rodello from showing the records to Mr. Hevelone (letter attached hereto as Exhibit D). First, Mr. Hevelone did not notify Mr. Byrnes properly of his intentions pursuant to IRC ¶ 7609 (a)(1),

, and secondly he completely disregarded the letter dated September 5th, 1981 and attached hereto.

On September 9th, 1981, administrative subpoena in hand and attached hereto as Exhibit E, Mr. Hevelone proceeded to intimidate Mr. Rodello into exposing the records he was not entitled to see at that time... Martin v. Chandis, 128 F2d; U.S. v. Powell, 379 U.S. 48 (1964), Oklahoma Press Publishing Company v. Walling, 377 U.S. 217; Local 174 International Brotherhood of Teamsters v. U.S., 240 F2d 387; U.S. v. Michigan Bell Telephone Company, 415 F2d 1284; Mays v. Davis, 7F Supp. 596; U.S. v. Brown, J36 F2d 117.

A short time later, Ken and Una Kay Byrnes were sent Form 872-A, which they promptly signed and returned to the proper IRS authorities. A copy of signed form 872-A is attached hereto as Exhibit F.

Ken & Una Kay Byrnes protest all the findings contained on Form 4549-A and signed by David J. Hevelone on September 11th, 1981. They protest the disallowance of any and all legitimate business and personal deductions. They protest the penalty for failure to file, they protest the elimination of personal deductions (besides themselves, Mr. & Mrs. Byrnes have three children), they protest the claim by Mr. Hevelone that the taxpayer's refused to present records until questions involving constitutional issues were answered, they protest Mr. Hevelone's claim that no K-1 was filed for Mr. & Mrs. Byrnes with the partnership return when Mr. Byrnes made out all K-1's for all limited partners except Mr. Cardi, they protest Mr. Hevelone's statement that no K-1 was filed with the taxpayer's return (no K-1 is filed by a limited partner but a schedule E and Form 3468), they protest the disallowance of the Investment Tax Credit at this time, since none had been applied for. Mr. & Mrs. Byrnes feel that the tax return is complete and should stand as submitted. They further protest, David J. Hevelone, as the examiner and Louis B. Kunzler, his supervisor, for their Federal Income Tax audits due to obvious harrassment, incompetence and many less than truthful comments made in front of witnesses.

The following law and/or authority will be used in addition to those already stated....

> IRS Form 4564 did not specify what areas of the tax returns cited were under examination and all information requested was both vague and broad in scope.... U.S. v. Newman, 441 F2d 170; U.S. v. Williams, 337 F Supp. 1114; First National Bank of Mobile v. U.S., 160 F2d 532; U.S. v. Coopers & Lybrand, 413 F Supp. 942; Hubner v. Tucker, 245 F2d 35....
>
> IRS was requested to specify what items of income and expense were in question on the tax returns, if any.... U.S. v. London Insurance Agency, Inc., 76-2 USTC; U.S. v. Powell, 379 U.S. 48 (1964); Hubner v. Tucker, 245 F2d 35...
>
> No taxpayer shall be subjected to unnecessary examinations or investigations and Code Section 7605(b) does not apply when this occurs... Pacific Mills v. Kenefick, 99 F2d 188...
>
> IRS has not shown that there is a misconception or mistake on the tax return for the years in question... U.S. v.

Powell, 379 U.S. 48 (1964); U.S. v. Wright Motor Company, Inc., 536 F2d 1090....

Respectfully Submitted,

Ken Byrnes

Una Kay Byrnes

Under penalties of perjury, we declare that the facts presented in our written protest, which are set out in the accompanying statement of facts, schedules, and other attached statements, are to the best of our knowledge and belief, true, correct, and complete.

Dated : April 17th, 1982

Ken Byrnes

Una Kay Byrnes

Exhibit A

Page ____ of ____ pages

Form 4549-A (Rev. September 1979) — Department of the Treasury – Internal Revenue Service — **Income Tax Examination Changes** — Return Form No. 1040

KENNETH M & UMA K BYRNES — 055-28-2936 — S.S. or E.I. Number — Filing Status: JOINT

6158 E SENECA
TUCSON, AZ 85716 — A126 — 7912

Person With Whom Examination Changes Were Discussed — Name and Title

1. Adjustments to Income	Year: 7812	Year: 7912	Year:
a. Sched C Expenses – Real Estate	1844	701	
b. Sched C Expenses – Film Produc.	14124	1607 ✓	
c. ORDINARY INCOME – Sweetcreek County Bank	2044		
d.			
e.			
f.			
g.			
2. Total Adjustments	18012 ✓	2310 ✓	
3. Adjusted Gross, Taxable or Tax Table Income Shown on Return or as Previously Adjusted	2742	4998 ✓	
4. Corrected Adjusted Gross, Taxable or Tax Table Income	20754 ✓	7308 ✓	
5. Tax	2536	-0-	
6. Alternative Tax, If Applicable (From Page ____)			
7. Tax Surcharge			
8. Corrected Tax Liability (Lesser of line 5 or 6, plus line 7)	2536	-0-	
9. Less Credits (Specify) a.			
b.			
c.			
10. Balance (Line 8 less total of lines 9a through 9c)	2536 ✓		
11. Plus: a. Tax from recomputing prior year investment credit			
b. Self-employment tax	1612 ✓	405 ✓	
c.			
12. Total Corrected Income Tax Liability (Line 10 plus total of lines 11a through 11c)	4148 ✓	405	
13. Total Tax Shown on Return or as Previously Adjusted	288 ✓	188 ✓	
14. Deficiency (Increase in tax before credit adjustments, line 12 less line 13)	3860 ✓	217 ✓	
15. Overassessment (Decrease in tax before credit adjustments, line 13 less line 12)			
16. Adjustments to Prepayment Credits	274	104	
17. Balance Due (Line 14 or 15 adjusted by line 16)	4134	321	
18. Overpayment (Line 14 or 15 adjusted by line 16)			
19. Penalties, if any (See explanation)	413		

Other Information: failure to file per § 6651(a)(1) 5% per mo., to a max

Examiner's Signature — District — Date

Form 4549-A (Rev. 9-79)

Internal Revenue Service Exhibit 32 Department of the Treasury
District Director

Date: MAR 2 6 1982

In Reply Refer to:
Code 411-30D
Person to Contact:
S. Hample
Contact Telephone Number:
602 261-3711
Tax Year Ended and Deficiency/
Overassessments:

12/31/78 $3,860.00
12/31/79 $ 217.00

Additions to Tax:
Sec. 6651(a)
12/31/78 $413.00
12/31/79 $-0-

055-28-2936

Kenneth M. and Una Kay Byrnes
6158 East Seneca
Tucson, AZ 85716

Dear Mr. and Mrs. Byrnes:

We have enclosed a copy of our examination report explaining why we believe an adjustment of your tax liability is necessary.

If you accept our findings, please sign and return the enclosed agreement or waiver form. If additional tax is due, you may want to pay it now. If so, please follow the instructions in the enclosed Publication 5.

If you do not accept our findings, you may request a conference with our Office of Regional Director of Appeals. Most cases considered at that level are settled satisfactorily. If the proposed increase or decrease in tax is $2,500 or less, a written protest is unnecessary. You may want to send us, with your conference request, a written statement outlining your position. If the proposed increase or decrease in tax is more than $2,500, please submit a written protest, in accordance with the enclosed Publication 5, to arrange a conference. Publication 5 also explains your appeal rights. If you request a conference, we will forward your written statement or protest to the Office of Regional Director of Appeals and they will contact you to schedule an appointment.

If we don't hear from you within 30 days, we will have to process your case on the basis of the adjustments shown in the examination report. An addressed envelope is enclosed for your convenience.

If you have any questions, please contact the person whose name and telephone number are shown above.

Thank you for your cooperation.

Sincerely yours,

District Director

Enclosures:
Examination Report
Agreement or Waiver Form 870
Publication 5 & Notice 394
Envelope
Pub. 876

2120 No. Central Ave., Phoenix, AZ 85004

Letter 950(DO) (Rev. 5-81)

Exhibit C

Form 2039-A
(Rev. Jan. 1981)

Summons

Department of the Treasury
Internal Revenue Service

In the matter of the tax liability of Kenneth M. and Una K. Byrnes

Internal Revenue District of Phoenix

Periods December 31, 1978
December 31, 1979

The Commissioner of Internal Revenue

To Kenneth M. and Una K. Byrnes
6158 East Seneca
At Tucson, Arizona 85716

You are hereby summoned and required to appear before David J. Hevelone an officer of the Internal Revenue Service, to give testimony relating to the tax liability or the collection of the tax liability of the person identified above for the periods shown and to bring with you and produce for examination the following books, records, papers, and other data:

All books and records, invoices, statements, and other documents pertaining to the operation of your production film and real estate sales businesses shown on schedule C of your tax return for the period beginning January 1, 1978 and ending December 31, 1979, including but not limited to: general journal and ledgers, cash disbursements, work receipts, bank statements and cancelled checks, savings account statements and passbooks, invoices for all expenses claimed, insurance policies for insurance deductions claimed, travel and entertainment logs, records of deposits to banks accounts, cancelled checks, and check registers for the years 1978 and 1979, all records of deposits to and withdrawals from savings accounts for the years 1978 and 1979, and Forms 1099 regarding interest or other income for the years 1978 and 1979.

Business address and telephone number of Internal Revenue Service officer named above:

301 West Congress, Room 2-D, Tucson, Arizona 85701 Telephone 792-6612

Place and time for appearance:

at Internal Revenue Service, 301 West Congress, Room 2-D, Tucson, AZ 85701

on the 1st day of September, 19 81 at 8:30 o'clock A. M.

Issued under authority of the Internal Revenue Code this 21st day of August, 19 81

David J. Hevelone — Revenue Officer
Signature of Issuing Officer — Title

Lewis Kunz — Group Manager
Signature of Approving Officer (if applicable) — Title

Part A — To be given to person summoned

Form 2039-A (Rev. 1-81)

EXHIBIT D

September 5, 1981

Mr. H.J. "Joe" Rodello
All-Pro Realty
2544 North Country Club
Tucson, Arizona 85716

Certified Mail-Return Receipt Requested

Dear Joe :

Please be advised that you are not to supply the Internal Revenue Service with any information nor comply with any Internal Revenue Summons concerning the Federal Income Tax Return of Kenneth and Una K. Byrnes for the years 1978 and 1979 until further notice from me, my wife or the United States Supreme Court.

A copy of this written letter or notice will be sent to the Internal Revenue Service by Certified or Registered Mail. This action will stay or prevent examination of your records under Internal Revenue Code Section 7609 effective January 1, 1977.

Sincerely,

Ken Byrnes

Una K. Byrnes

cc: Internal Revenue Service
David J. Hevelone

Form 2039-A
(Rev. Feb. 1978)

SUMMONS

Exhibit E

Department of the Treasury
Internal Revenue Service

In the matter of the tax liability of KENLEIN M + VNA K CYCLES

Internal Revenue District of PHOENIX Periods 1978 + 1979

The Commissioner of Internal Revenue

To JOE RODELLA
2544 N COUNTRY CLUB
At TUCSON, AZ 85716

You are hereby summoned and required to appear before DAVID J. HEVELONE
an officer of the Internal Revenue Service, to give testimony relating to the tax liability or the collection of the tax liability of the person identified above for the periods shown and to bring with you and produce for examination the following books, records, papers, and other data

All records pertaining to earnings, bonuses, or commissions paid to the above-named taxpayer's for the calendar years 1978 + 1979.

Sworn and attested

Business address and telephone number of Internal Revenue Service officer named above

Place and time for appearance 301 West Congress, Room 2-D, Tucson, AZ 85701 tel. 792-6012

at Internal Revenue Service, 301 West Congress, Room 2-D, Tucson, AZ 85701

on the 21st day of September, 19 81 at 8:30 o'clock A M

Issued under authority of the Internal Revenue Code this 9th day of Sept., 19 81

David J. Hevelone — Revenue Agent
Signature of Issuing Officer — Title

Frederick E. Shaffer — Group Manager
Signature of Approving Officer (if applicable) — Title

Part A — To be given to person summoned

Form 2039 A (Rev. 1-81)

Department of the Treasury – Internal Revenue Service

Form 872-A
(Rev. September 1980)

Special Consent to Extend the Time to Assess Tax

In reply refer to:
SA:T:7:SM
SSN or EIN
855-20-2935

Exhibit F

NTc

Kenneth M Byrnes & Una K. Byrnes
(Name(s))

taxpayer(s) of 6158 E. Seneca, Tucson, Az. 85716
(Number, Street, City or Town, State, ZIP Code)

NOV 10 1981
DISTRICT DIRECTOR
6880 E. Broadway, Tucson, AZ

and the District Director of Internal Revenue or Regional Director of Appeals consent and agree as follows:

(1) The amount(s) of any Federal Income tax due on any return(s) made by or
(Kind of tax)
for the above taxpayer(s) for the period(s) ended December 31, 1978
may be assessed on or before the 90th (ninetieth) day after: (a) the Internal Revenue Service office considering the case receives Form 872-T, Notice of Termination of Special Consent to Extend the Time to Assess Tax, from the taxpayer(s); or (b) the Internal Revenue Service mails Form 872-T to the taxpayer(s); or (c) the Internal Revenue Service mails a notice of deficiency for such period(s); except that if a notice of deficiency is sent to the taxpayer(s), the time for assessing the tax for the period(s) stated in the notice of deficiency will end 60 days after the period during which the making of an assessment was prohibited. A final adverse determination subject to declaratory judgment under sections 7428, 7476, or 7477 of the Internal Revenue Code will not terminate this agreement.

(2) This agreement ends on the earlier of the above expiration date or the assessment date of an increase in the above tax that reflects the final determination of tax and the final administrative appeals consideration. An assessment for one period covered by this agreement will not end this agreement for any other period it covers. Some assessments do not reflect a final determination and appeals consideration and therefore will not terminate the agreement before the expiration date. Examples are assessments of: (a) tax under a partial agreement; (b) tax in jeopardy; (c) tax to correct mathematical or clerical errors; (d) tax reported on amended returns; and (e) advance payments. In addition, unassessed payments, such as amounts treated by the Service as cash bonds and advance payments not assessed by the Service, will not terminate this agreement before the expiration date determined in (1) above. This agreement ends on the date determined in (1) above regardless of any assessment for any period includible in a report to the Joint Committee on Taxation submitted under section 6405 of the Internal Revenue Code.

(3) This agreement will not reduce the period of time otherwise provided by law for making such assessment.

(4) The taxpayer(s) may file a claim for credit or refund and the Service may credit or refund the tax within 6 (six) months after this agreement ends.

MAKING THIS CONSENT WILL NOT DEPRIVE THE TAXPAYER(S) OF ANY APPEAL RIGHTS TO WHICH THEY WOULD OTHERWISE BE ENTITLED.

YOUR SIGNATURE HERE → [signature] — 11-12-81 (Date signed)

SPOUSE'S SIGNATURE → [signature] — 11/12/81 (Date signed)

TAXPAYER'S REPRESENTATIVE SIGN HERE → ——— (Date signed)

CORPORATE NAME → ———

CORPORATE OFFICER(S) SIGN HERE → ——— (Title) ——— (Date signed)

——— (Title) ——— (Date signed)

Prescott A. Derry
DISTRICT DIRECTOR OF INTERNAL REVENUE

REGIONAL DIRECTOR OF APPEALS

BY [signature] (Signature and Title) APPEALS ASSISTANT

NOV 16 1981 (Date signed)

Instructions

If this consent is for income tax, self-employment tax, or FICA tax on tips and is made for any year(s) for which a joint return was filed, both husband and wife must sign the original and copy of this form unless one, acting under a power of attorney, signs as agent for the other. The signatures must match the names as they appear on the front of this form.

If this consent is for gift tax and the donor and the donor's spouse elected to have gifts to third persons considered as made one-half by each, both husband and wife must sign the original and copy of this form unless one, acting under a power of attorney, signs as agent for the other. The signatures must match the names as they appear on the front of this form.

If this consent is for Chapter 41, 42, or 43 taxes involving a partnership or is for a partnership return, only one authorized partner need sign.

If you are an attorney or agent of the taxpayer(s), you may sign this consent provided the action is specifically authorized by a power of attorney. If the power of attorney was not previously filed, please include it with this form.

If you are acting as a fiduciary *(such as executor, administrator, trustee, etc.)* and you sign this consent, attach Form 56, Notice Concerning Fiduciary Relationship, unless it was previously filed.

If the taxpayer is a corporation, sign this consent with the corporate name followed by the signature and title of the officer(s) authorized to sign.

If this consent is for Chapter 42 taxes, a separate Form 872-A should be completed for each potential disqualified person or entity that may have been involved in a taxable transaction during the related tax year. See Revenue Ruling 75-391, 1975-2 C.B. 446.

May 10th, 1982

Mr. L. Lindroth
Internal Revenue Service
2120 No. Central Avenue
Phoenix, Arizona 85004
Attn. 142-30D

Dear Mr. Lindroth :

This letter is in answer to one dated April 30th, 1982 received from Prescott Berry, District Director. Since you have been named as the person to contact, my letter therefore is addressed to you.

I am somewhat at a loss after receiving the April 30th letter since what IRS claimed was omitted from my letter of protest dated April 17th, 1982, was definitely included. Nevertheless, in my attempt to resolve this matter as expeditiously as possible and in trying to help your agency as best I can, the following hopefully will satisfy you.

From April 30th letter, IRS statement, INDICATE WHETHER YOU WANT A HEARING WITH A MEMBER OF OUR OFFICE OF REGIONAL DIRECTOR OF APPEALS;

> From Taxpayer protest letter dated April 17th, 1982, Taxpayer statement, page 1, item 1, " AND DO HEREBY REQUEST A HEARING IN TUCSON, ARIZONA BEFORE A REPRESENTATIVE OF THE OFFICE OF REGIONAL DIRECTOR OF APPEALS OF THE INTERNAL REVENUE SERVICE ".

From April 30th letter, IRS statement, COMPLETE IN ACCORDANCE WITH GUIDELINES IN PUBLICATION 5;

> From Taxpayer protest letter dated April 17th, 1982, Taxpayer adheres to all guidelines set forth in publication 5, page 1, item 1, item 2, item 3, item 4; page 2, item 5, item 6; ALL GUIDELINES COVERED IN TAXPAYER LETTER OF PROTEST ON PAGES 1 thru 8.

From April 30th letter, IRS statement, IDENTIFY ITEMS YOU TAKE EXCEPTION TO, THE FACTS RELATING TO THEM, AND THE LAW, REGULATIONS, OR CASES THE PROTEST IS BASED ON;

> From Taxpayer protest letter dated April 17th, 1982, EVERYTHING REQUESTED RUNS THROUGHOUT THE ENTIRE LETTER OF PROTEST ON PAGES 1 thru 8.

From April 30th letter, IRS statement, ADDRESS THE ISSUES IN THE AGENTS REPORT OF EXAMINATION OR THIS OFFICE WILL ISSUE A STATUTORY NOTICE OF DEFICIENCY AND FURTHER APPEAL WILL BE TO TAX COURT;

> From Taxpayer protest letter dated April 17th, 1982, TAXPAYER BELIEVES JUST LIKE ALL THE ITEM'S PREVIOUS TO THIS ONE, THAT THIS INFORMATION HAS BEEN SATISFACTORILY SUPPLIED THROUGHT HIS LETTER OF PROTEST, WITH THIS IN MIND, TAXPAYER WILL ATTEMPT TO ANSWER THIS ITEM MORE FULLY.

FROM AGENTS REPORT OF EXAMINATION -

PAGE 1, ISSUE A : Taxpayer can SUBSTANTIATE all business deductions pertaining to real estate for 1978 & 1979. Taxpayer NEVER refused to present records until questions involving constitutional issues were answered. Taxpayer PROTESTS the disallowance of all Schedule C expense deductions.

PAGE 1 & 2, ISSUE B : Taxpayer can SUBSTANTIATE all business deductions taken pertaining to film production for 1978 & 1979. Taxpayer NEVER refused to present records until questions involving constitutional issues were answered. Taxpayer PROTESTS the disallowance of all Schedule C expense deductions.

PAGE 2, ISSUE C - Taxpayer can SUBSTANTIATE his being a limited partner in the limited partnership known as Sweet Creek County War Investors and everything stated by the agent under this heading/facts is UNTRUE, except that taxpayer did claim a deduction, ordinary loss on his 1978 return. The deduction was taken since it was LEGALLY DUE HIM. Taxpayer was NEVER asked to produce records to support this item on his tax return. Taxpayer NEVER refused to present records or answer questions until questions involving constitutional issues were answered. Taxpayer PROTESTS the disallowance of the partnership ordinary loss claimed for his being a limited partner in Sweet Creek County War Investors.

PAGE 3, ISSUE D - Taxpayer NEVER claimed his Investment Tax Credit for 1978 although he WAS entitled to it. Taxpayer can SUBSTANTIATE his

partnership interest in Sweet Creek County War Investors. Information contained under this heading/facts CANNOT BE TRUE. Taxpayer NEVER refused to present records or answer questions until questions involving constitutional issues were answered. Taxpayer PROTESTS the disallowance of the Investment Tax Credit and since NONE was applied for, he NOW APPLIES FOR IT.

PAGE 4, ISSUE E - Taxpayer can SUBSTANTIATE all personal and business deductions on his tax returns for 1978 and 1979. Taxpayer PROTESTS the recalculations for change in self employment income and the adjustments thereof.

PAGE 5, ISSUE F - Taxpayer PROTESTS earned income credit recalculations and stands on tax returns as filed.

Hopefully, the aforementioned information will be sufficient in order to properly continue through the appeals process. This letter is an addendum to my original filing as perscribed by regulations. Issues also to be addressed and contained in my letter of protest dated April 17th, 1982 are as follows :

(1) At NO time did I refuse to present my records for inspection.... this can be supported by audio cassette recordings as well as written transcripts,

(2) At NO time did the agent ask to verify specific items in question on my tax returns..... Page 7, lines 10-16 in Taxpayer's original letter of protest,

(3) At NO time did the Taxpayer refuse to answer questions on grounds of Constitutional issues.... to be supported by audio cassette recordings and written transcripts,

(4) Taxpayer has been harrassed and his rights abused by the agent and his group manager by the implementation of illegal procedures in order to obtain information they were not entitled to.... Page 5 lines 18 - 28 & Page 6 lines 1 - 10...., 4/17/82 ,

(5) Taxpayer was initially under a single year audit and after being served with an administrative subpoena, was suddenly under a multiple year audit. Group Manager in front of witnesses stated it was a typographical error. If this be true, then IRS notice of deficiency and my letter of protest should solely be for tax year, 1978... Page 4, lines 20 - 28 & Page 5, lines 1 - 6...., 4/17/82,

(6) IRS when asked some questions, none of which were dealing with constitutional issues and solely pertaining to taxpayer's audits, refused to answer not all of the questions, but refused to answer even one. All of this just prior to IRS terminating the examinations.... Page 5, lines 7 - 17...., 4/17/82 ,

(7) And, but not limited to all the issues addressed in Taxpayer's original letter of protest and dated April 17th, 1982 and received by IRS, April 20th, 1982,... Pages 1 - 8....

Respectfully submitted,

Ken Byrnes

Una Kay Byrnes

Internal Revenue Service
District Director

Department of the Treasury

Date: April 30, 1982

Tax Years:
7812,7912
Person to Contact:
L. Lindroth
Contact Telephone Number:
(602)261-3711

Kenneth M. and Una K. Byrnes
6158 East Seneca
Tucson, AZ 85712

Dear Mr. and Mrs. Byrnes,

We are returning your protest so you can complete it as indicated by the items checked below.

Please furnish the required information within the next 20 days. An addressed envelope is enclosed for your convenience.

If you have any questions, please contact the person whose name and telephone number are shown above.

Thank you for your cooperation.

Sincerely yours,

District Director

Enclosures:
Protest
Envelope
☒ Publication 5

- ☐ File in duplicate.
- ☐ Both husband and wife must sign.
- ☐ Sign with the corporate name, followed by the signature and title of the officer authorized to sign for the corporation.
- ☒ Identify items you take exception to, the facts relating to them, and the law, regulations, or cases the protest is based on.
- ☐ Include a power of attorney or tax information authorization.
- ☒ Indicate whether you want a hearing with a member of our Office of Regional Director of Appeals.
- ☒ Complete in accordance with guidelines in Publication 5.
- ☒ Address the issues in the agents report of examination or this office will issue a statutory notice of deficiency and further appeal will be to the tax court.

INTERPRETATION OF THE LAW

Mr. BYRNES. Now, as it was told to me, as far as the matter of depreciation was concerned, their argument why they were disallowing it was because they interpreted the law as stating that as a motion picture producer, the partnership had take the depreciation along the income forecast method of depreciation.

I had proved to them that the law did not say that. It said it would look favorably toward the income forecast method of depreciation, but you would be allowed to also take it along the straight line method of depreciation, for the logging times. This was going on for 2 years. They would not accept that.

EFFORTS TO IMPOSE PENALTY

The $21,000 penalty which they tried to implement—and I'll make this my last point, because we're running out of time, was for the filing of a late partnership return or the incomplete filing of a partnership return.

I received this letter from Ogden, and I will read it:

> Recently enacted legislation provides for a penalty, if a partnership that is required to file a return does not file on time, files an incomplete return. The partnership is charged for each month or part of a month the return is incomplete up to a maximum of 5 months.
>
> The penalty will not be charged if you provide us with the information requested within 30 days from the date of this letter.

The information was supplied within 30 days from the date of this letter, and this all took place before the local agent called Ogden and implemented the $21,000 penalty. Then for 6 months afterwards we are disputing with him about why that should not be assessed. I finally went to Ms. Krogue at the problems and resolution office, she did eventually abate that penalty, for the reasons stated here, and because we were given some erroneous information by the accountant.

Now, I can't understand where it says if we supply them with the information they request they will not assess the penalty, they will totally disregard it and start trying to assess the penalty. And I have to assume that they do this for one of several reasons. Probably 7 out of 10 taxpayers will eventually pay that penalty rather than try to go ahead and fight and stand up for their rights.

That's all I have to say at this point.

PROBLEMS AND RESOLUTION OFFICE

Senator DECONCINI. Thank you. Going to the problem resolution office, is that the only time you went there?

Mr. BYRNES. The only time.

Senator DECONCINI. What is the attitude of that office when you go there? Do you get a feeling that they are independent from the Commissioner and the District Director, that they do have some autonomy?

Mr. BYRNES. It's hard to say they're independent when they're employed by the Internal Revenue Service and they're paid by the Government. Just like it's very difficult to assume that you can get a fair hearing in tax court when the judges are paid by the Federal Government. The Internal Revenue Service is the biggest single

source for the revenue for the U.S. Government. I must say Ms. Krogue handled the problem very nicely. I did not particularly agree with what was originally her assessment, which was that we cannot abate the penalty for the reasons I was given. What I brought up about the error made by the accountant was just an afterthought, out of frustration of bringing back many points that might not have been covered before. I can't understand when you support this information where the Ogden office stated we will not assess a penalty if you do this, and then you do this, and they try to assess a $21,000 penalty, there's no logic to it.

Senator DECONCINI. That sounds like the right hand doesn't know what the left hand is doing then.

Mr. BYRNES. And they don't care, either, Senator.

NONRESPONSES TO CORRESPONDENCE

Senator DECONCINI. It might be the computer age, and that is the reason they're not on top of some of these notices.

Mr. BYRNES. You know, the interesting thing——

Senator DECONCINI. Did you ever get any admission to that, that it might be a computer error?

Mr. BYRNES. No; because I had sent during this problem period probably half a dozen letters to the Internal Revenue in Ogden, begging them for some kind of response to the letters I had sent. I never got an answer. I finally did get an answer, but only to one of the six letters. I'm still trying to decipher their response. We had a hundred percent penalty problem a few years ago, which was rectified, and when we originally made the Service aware that we were contesting the payment of certain payroll taxes, we sent an accompanying letter to Ogden with it, explaining this. Six months later the collection officer came to collect the checks for $30,000. When we explained that we had contested the moneys owed, his statement was that the computer can't read letters.

Senator DECONCINI. Mr. Byrnes, have you employed counsel? A tax consultant?

Mr. BYRNES. I prefer to go it alone. Primarily because we have employed counsel before and it was a definite waste of money. And I think because in this area, unfortunately, I've obtained a little more experience than most lawyers have.

Senator DECONCINI. Very good, thank your very much, Mr. Byrnes.

I have received some material from the Internal Revenue Service in response to the issues raised by Mr. Ken Byrnes. The material will be inserted in the record at this point.

[The material follows:]

TESTIMONY REFERENCE

Issues: Mr. Byrnes stated that the Internal Revenue Service treated the motion picture owned by a limited partnership as an illegal tax shelter and that the revenue agent and his group manager lied as to ever receiving a partnership tax return and the accompanying K-1's when it was personally handed to the examiner.

Mr. Byrnes stated that the revenue agent and his group manager wanted to disallow the depreciation and investment credit legally allowable to the limited investors and that nine days after the resolution of these issues, the examiner attempted to implement a $21,000.00 penalty on the partnership for failure to file form 1065 on time.

Mr. Byrnes further stated that the revenue agent refused to state in writing that the audit on the partnership was completed and that the revenue agent and group manager ordered 35 to 40 of the local partners' returns before the audit on the partnership was completed and no firm determination on investment credit was made.

Mr. Byrnes stated that the first examination interview was abruptly terminated when taxpayer attempted to ask a few pertinent questions of the examiner. A one year examination suddenly multiplied into multiple audits; the second one under administrative summons. At a subsequent meeting, the group manager was asked why the 1979 year records were summoned. He replied, "It must have been a typographical error."

Mr. Byrnes stated that they complied with the Internal Revenue Service request to extend the statute of limitations for the 1978 year by signing form 872A. Without any further contact, Internal Revenue Service very abruptly terminated their special consent by way of a receipt of a 30-day letter. Included with the letter was a report that contained one lie after another.

Response: Internal Revenue Service never treated or classified the limited partnership as an illegal tax shelter. Mr. Byrnes was present at a meeting with the general partner when they were specifically told the partnership was not treated by the Internal Revenue Service as a tax shelter.

Internal Revenue Service had no microfilm record of receiving the 1978 tax return for the partnership. A copy of the 1978 return was requested from the general partner and when it was received it was sent to the Ogden Service Center for processing. The case file records the receipt of these returns by the examiner. The copy of the 1978 return submitted by the general partner did not contain schedule K-1's, as claimed by Mr. Byrnes, but did contain a list of investors which the revenue agent accepted in lieu of the K-1's.

Depreciation and investment credit were issues raised while examining the partnership return. The Internal Revenue Code permits depreciation on a motion picture to be computed under the income forecasting method when a useful life cannot be determined. Since agreement on this issue could not be reached, Mr. Byrnes contacted the group manager's supervisor and requested a meeting. As a result of that meeting, it was determined from evidence of marketing failures, that taxpayer's position was correct and the Internal Revenue Service accepted the 3-year life claimed by the partnership.

On July 6, 1981, Ogden Service Center, independently of the revenue agent, assessed a penalty of $12,250.00 for failure to file a complete 1979 partnership return on time as required by Internal Revenue Code Section 6698. The revenue agent who had the investor list noted that the number of partners listed on the 1979 return was incorrect and notified Ogden Service Center who adjusted the penalty on August 10, 1981, based on the correct number of partners to $21,000.00. On October 1, 1981, the Phoenix District Problem Resolution Officer abated the penalty of $21,000.00 based on supporting evidence and credible verbal support which established the original 1979 return was filed timely without an employer identification number.

It is normal practice to order the partners' returns as soon as the revenue agent knows an adjustment will be postponed to the partnership. The returns of investors were ordered to adjust the investment credit pass through to the partners to the allowable rate of 66⅔%. When the revenue agent was asked to state in writing that the examination was completed, he advised the taxpayer that no-change letters are issued only by the District Director after a case closed by a revenue agent has been accepted by the Review function.

On August 21, 1981, Mr. Byrnes appeared as requested for an examination of his 1978 tax return. Mr. Byrnes would not provide any records with regard to his personal tax return until questions pertaining to other taxpayers and his constitutional rights were answered. The revenue agent and the group manager did not answer the questions which would violate disclosure laws. Since they were unable to obtain any information relating to Mr. Byrnes' tax liability, the interview was terminated. An administrative summons was issued covering 1978 and 1979. The revenue agent erred in issuing a summons for 1979 without first notifying the taxpayer that the 1979 years was also being examined. During a subsequent interview with Mr. Byrnes, the group manager made an incorrect assumption and told Mr. Byrnes that the 1979 year records requested on the summons was a typographical error when in fact it was not.

A 30-day letter does not terminate a special consent to extend the statute of limitations. It merely informs the taxpayer of his/her appeal rights and gives the taxpayer 30 days to make a decision to either appeal or agree to the findings of the revenue agent. The 30-day letter accompanies and is attached to the revenue agent's

report. The Special Consent to Extend the Time to Assess Tax, Form 872A, is a binding agreement signed by the taxpayer and an IRS representative. Without the agreement to extend the statute of limitations, the Service would have been forced to send a notice of assessment and Mr. Byrnes would have been unable to use the appeals process. The report that accompanied the 30-day letter was the agent's report based on Mr. Byrnes' refusal to support his claimed expenses. The examination results are as follows:

	1978	1979
Increase in tax	$4,134.00	$321.00
Failure to file penalty per 6651(a)(1)	413.00	
Total	4,547.00	321.00

Mr. Byrnes did not agree with the revenue agent's findings.

NOTE.—Mr. and Mrs. Byrnes signed a waiver authorizing the Internal Revenue Service to disclose their returns, return information, and taxpayer return information, for all tax years. Mr. Byrnes signed a waiver authorizing the Internal Revenue Service to disclose the partnership returns, return information, and taxpayer return information, for the tax years 1978 and 1979.

STATEMENT OF TODD ACKERMAN

PREJUDICE, DELAY, AND BLACKMAIL

Senator DECONCINI. The next witness is Mr. Todd Ackerman.

You may proceed, Mr. Ackerman.

Mr. ACKERMAN. Thank you very much for this opportunity, Senator.

I'd like to address three specific items relating to estate tax return audits, which are handled in the Tucson office.

I'd like to make some general comments and really make some suggestions as much as anything, rather than beat out the specific of the case.

The three areas I'd really like to address are prejudice, delay, and what I'd like to call blackmail, although perhaps there's a better legal term for it.

PREJUDICE

In my particular instance I feel that the auditing agent's responses in this situation were very much prejudiced. I felt so all along. This was confirmed by reading comments of the auditor in an internal memo obtained through the Freedom of Information Act, stating that the agent was prejudiced and had problems with my attorney in the past on similar subjects.

Senator DECONCINI. Did the internal memo state that?

Mr. ACKERMAN. Oh, yes, the agent wrote that.

Senator DECONCINI. The agent wrote that? And do you have a copy of that?

Mr. ACKERMAN. Not with me; no. I'll be happy to send it.

Senator DECONCINI. Will you share that with us?

Mr. ACKERMAN. Certainly.

[The memo was received and inserted in the subcommittee files.]

Senator DECONCINI. Continue, please.

Mr. ACKERMAN. I don't doubt at all that there are prejudices. Certainly they're not all Internal Revenue's acts by an adversary proceeding. My only suggestion is that perhaps these things in the

future could be avoided by having the administrator review agent audit reports done outside the district. I just can't believe that within the district an unbiased administrative review can take place.

DELAY

The second subject I'd like to address is delay. The tax system seems to be fraught with delay, and it's not only frustrating to the taxpayers, it's frustrating to the system. God only knows what the cost to the taxpayers is, directly and indirectly. It costs the taxpayer out of their own pockets to be involved with a long drawn out procedure. It also costs the taxpayer because he's paying in an abstract manner. He's paying for the cost of the system that's auditing him. In this particular example the estate tax return was for an individual who died April 29, 1979, and the return was filed in a timely manner in January 1980. The first contact by the audit agent was in July 1980. After some 6 or 7 months of frustrating dealings with the audit agent, myselt and my attorney requested that the agent write up the case, as was agreed, and send it on to the appeal level for administrative approval and to the appeals level.

In March 1981, low and behold if the agent doesn't raise a whole new issue, which had never been mentioned before. The agent's exam report as written up for the taxpayers was received in September 1981. We heard from the appeals board in December 1981. We finally met with the appeals officer in April 1981, and knowing I was coming over here I called them this morning to find out where it stated—he said the papers were in the hands of my attorney; which means he received them today. That's about 2½ years, especially after the taxpayer had specifically requested them. They agreed we could't agree.

I don't know what the specific answser to this is, but it seems to me that this is a district service, both to the taxpayers as I say and to the public in general, because of the costs involved.

COST OF COUNSEL

Senator DECONCINI. Yes. Have you had counsel representing you all this time?

Mr. ACKERMAN. Oh, yes.,

Senator DECONCINI. For the 2½ years?

Mr. ACKERMAN. Yes.

Senator DECONCINI. Can you give us a figure or range of what that has cost you?

Mr. ACKERMAN. Well, I can give you a figure, but what the actual delay cost is——

Senator DECONCINI. No; what the cost for professional service was.

Mr. ACKERMAN. I pay my attorney by the hour, he's a very good friend of mine and the total fees so far I think have been in the neighborhood of $7,000.

Senator DECONCINI. Of course that doesn't count your time.

Mr. ACKERMAN. If I charged for my time, I think I could legitimately probably submit a bill for $50,000 without question.

Senator DECONCINI. What business are you in?

Mr. ACKERMAN. I'm in the trust business. This happens to be a personal situation. But I am in the trust business.

Senator DECONCINI. Go ahead.

Mr. ACKERMAN. At any rate, it seems to me the system could be cleaned up in some manner.

I might add that also on the papers obtained throught the Freedom of Information Act, the agent put down his total hours spent on this project over 2½ years and it was 78 hours, if I remember correctly. I spent four times that amount of time.

If that's all the time he spent, it shouldn't have taken 2½ years.

BLACKMAIL

My third point, I mentioned blackmail. Many people refer to it in other ways, but I'll call it that for lack of a more descriptive term. And I will, if I may, explain my interpretation of it.

When we finally met with the appeals officer there were four issues involved, and questioned, on the estate tax return. Two of them were basically inconsequential, two of them were major, one of them being, major in terms of dollars. One of them being one that was raised 2 months after we requested that the audit be concluded. The appeals officer addressed one of them first, and his comment was, I can't quote it directly but I'm pretty close, he threw the papers on the desk and said, "This one is a loser for the Service." He went on and tried to explain, which we had been trying to tell the audit agent all along. He agreed. We left that for a moment on the side and went on to the other major subjects, on which we could not agree in any manner. The agent then turns around and says as I was packing my bags to leave, "well, the Service might have a case on the previous one he already had said was a loser. Maybe we can reach a compromise."

We'll give up this one which he's already said is a total loser, and you give up that one. That's basically how it worked out.

COSTS AND TAX COURT BACKLOG

After due consideration, I decided not to pursue it any further, by myself, in concert with my relatives. The reason for this is, that I don't know what the backlog is to get into Tax Court today. Perhaps one of these learned gentlemen can tell me. I'd guess it's in excess of 2 years, maybe 3 years. The last I heard they were postponing cases.

The cost in dollars and cents in attorney's fees, in personal costs, and 3 more years of aggravation are not worth what the dollars were. And I might add that the dollars were considerable.

The Service I think takes advantage of this situation. They have absolutely nothing to lose, and everything to gain by postponing and making people go to court, or acquiesce; or make a trade on a deal wherein they feel strongly that they may be right, based on the law if they had an opportunity to reasonably adjudicate the question.

That's all I have, sir.

Senator DECONCINI. I want to thank you. I think you've demonstrated some of the kinds of examples that I've run across that I

attribute to poor management. Maybe blackmail is the appropriate word, but that really disturbs me, and I'm very pleased the Commissioner remained here to hear this, because these people are ordinary citizens. They're not some off-the-wall group that is hanging around here waiting to trump up some stories, and I'm pleased that you can witness them. I intend to see that the balance of the members of the committee have an opportunity to review this testimony, and to ask whether or not they have the same problems in their State. Maybe we can build a ground swell within the Service.

INTEREST RATE CHARGES

Mr. ACKERMAN. One other comment on that, if I may. In the past, perhaps it's been to the taxpayer's advantage to some extent because of the low interest rates charged by the Internal Revenue Service. I pointed that out to the agent when I was trying to get him to finish up the audit, to get on with it. That didn't seem to make too much of an impression. So from that point of view, you can't complain on the dollars and cents point of view as far as interest goes. By the same token, after February 1, we now have a situation where the Service is charging considerably more than current interest rates available to the public. And this is a double disservice to the taxpayer, he can't move the system. The taxpayer must respond in certain periods of time and the only time limit that holds the Service is the statute of limitation, and they love to get the waivers out on that as well.

Thank you.

Senator DECONCINI. Thank you very much.

I have received some material from the Internal Revenue Service in response to the issues raised by Mr. Todd Ackerman. The material will be inserted in the record at this point.

[The material follows:]

TESTIMONY REFERENCE

Issue: Mr. Ackerman states that there was excessive delay in concluding the examination of the estate of Ruth W. Ackerman; bias on the part of the examiner against Mr. Ackerman and the attorney for the estate; and blackmail tactics applied by the appeals officer in his resolution of the issues raised by the examining officer.

Response: Mr. Todd Ackerman is the son of Ruth W. Ackerman, deceased, and the personal representative of her estate. Mr. Ackerman was personally involved in the examination of the estate tax return and the related delinquent gift tax return. He was also represented by the Tucson tax attorney who had prepared the estate return. The proposed adjustments to the Ruth W. Ackerman estate tax return which Mr. Ackerman did not agree to were: The inclusion of $272,000 of gifts made by the decedent in 1976 within three years of her date of death; the disallowance of $1,495.00 in claimed administrative expenses; assertion of a delinquent gift tax on transfers determined to have been made in 1972 by deceased in conjunction with the sale of $569,000.00 in IBM common stock and failure to file penalties. The return value of the estate was $1,200,000.00.

The Internal Revenue Service Policy is one of not raising frivolous issues but only issues of merit and not to use issues for purposes of bargaining in disposition of other issues. Transfers in the sum of $272,000.00 made by Ruth W. Ackerman were included in the taxable estate by the examining officer because the transfers were all within three years of the date of decedent's death and Mr. Ackerman had not advanced sufficient evidence to overcome inclusion of these transfers in the taxable estate of the decedent. The examiner of the 1972 bargain sale and the fact decedent was 69 years old at the time of the gifts.

An item included in the decedent's estate consisted of unsecured promissory notes from the children of Ruth W. Ackerman. These notes resulted from the sales of IBM

common stock to them in 1972. The sales were for $569,000.00, the then market value of the IBM stock. The promissory notes earned interest at an annual rate of 4.89%. The estate valuation of the outstanding balance of these notes, $393,938.00, was listed at $196,918.00 or at 50% of the face value of the notes at the time of decedent's death based on the low interest note, the long term of the note and the fact they were unsecured promises to pay.

The Internal Revenue Service accepted this return value on examination as being reasonable but held that at the time of sale less than $569,000.00 in value had been received. The examining officer asserted a gift had resulted with an accompanying gift tax owing for which the decedent's estate had an obligation to file a gift tax return for the year 1972. The position of the Internal Revenue Service in valuing the gift was the same as the estate's position in valuing these notes in the decedent's estate. The gifts or transfer were determined to be $291,331.00.

When the examiner brought up this issue on April 22, 1982, at a conference with Mr. Ackerman and his attorney, Mr. Ackerman stated that the examiner was being vindictive by bringing up the "new issue" after the examination had been in progress for several months. He demanded the examination be closed and forwarded immediately to Appeals. He ended the conference at this point.

Mr. Ackerman stated that the examining officer was biased against him and his attorney. This is based on an internal document secured by him as the result of the Freedom of Information request.

This document was in response to a directive from the District Quality Review Staff. Appeals had requested clarification of the disallowance of $1,495.00 in administrative expenses and failure to discuss this item with Mr. Ackerman. The response was that the examiner had intended to mention this item in the April 22, 1981, conference but Mr. Ackerman terminated the meeting. Included were additional comments which were subjective and added nothing to the factual development of the case, and should not have been made. There is no indication, however, the examiner raised any issues due to bias, animosity or vindictiveness. All adjustments proposed by the examiner were in fact agreed to at the Appeals level except the contemplation of death issue. This was a very large issue which was properly raised by the examiner.

Mr. Ackerman stated that the period of time the return was in the examination and appeals process was excessive. The return was filed on January 30, 1980, and closed from the District to Regional Appeals Office in Phoenix on October 23, 1981. This exceeded by approximately three months the Internal Revenue Service guideline of 18 months from filing to completion of district processing. The case was returned from Appeals for additoonal information and developemnt in December of 1981 and for purposes of providing the file to the Personal Representative under a Freedom of Information request in January of 1982. The case was ultimately settled in Appeals as an agreed case and is currently awaiting processing to the Ogden Service Center for assessment. Total elapsed time since the filing of this return is now approximately 29 months.

Mr. Ackerman stated the appeals officer resorted to blackmail tactics in the resolution of the unagreed issues raised by the examining agent. This statement is based upon the statements purportedly made relative to the contemplation of death issue. It must be noted that Appeals possess settlement authority and may make decisions based on hazards of litigation based on the relative merits not only to each issue presented but on the case in total. This authority does not extend to the examining officer.

This case was closed as an agreed case by Appeals. Mr. Ackerman conceded the 1972 gift tax together with the delinquency penalty and the $1,495.00 disallowed administrative expense. The appeals officer conceded in full the 1976 gifts made by the decedent as not having been made in contemplation of death and as such were excludable from the taxable estate.

NOTE.—Mr. Ackerman signed a waiver authorizing the Internal Revenue Service to disclose the estate return, return information, and taxpayer return information.

STATEMENT OF BRUCE RIPLEY

ILLEGAL TAX PROTESTER

Senator DECONCINI. Our next witness will be Mr. Bruce Ripley.
Mr. RIPLEY. I have some material here I will leave with you.
Senator DECONCINI. We'll put it in the file.

Mr. RIPLEY. My name is Bruce Ripley and on my left is Don MacPherson. I'm not from your State. I'd like to be, but I am here representing a few people who are. Without any disrespect, though, there was something that came out this morning, that interests me. I heard the terminology "illegal tax protester," and I've always been amused by that. I've often wondered what is a legal tax protester. I've never had that question answered. But I am surprised and pleased to hear about the ombudsman and the plan to follow that. That was a well kept secret, at least from me and I'm delighted to hear of that bit of information.

LIFE INSURANCE

I started in 1966 in the financial planning business when I discovered two basic things. One, the cash value of life insurance is a fraud perpetrated on the American public.

Senator DECONCINI. Say that again.

Mr. RIPLEY. Cash value life insurance is a fraud perpetrated on the American public in my opinion.

PRESERVATION OF ESTATES

The other is few people have their affairs in order for the preservation of estates, such as having wills, or outdated wills. I also discovered at that time an instrument referred to as a revokable living trust. It is the type of trust that is used in defiance of the 1959 restatement of trusts, and it does deal specificially with how to avoid the delays of probate, though it saves very little in taxes.

But I did do a lot of studying in this particular area. In 1975 I discovered and learned, after intensive study about the pure common law trust, which has been in the past used as an agency of commerce, in this country. This is a different type of trust than is the one defined in the 1959 restatement of trusts. As a matter of fact, the origin of this particular kind of trust finds its origination in English common law. The Supreme Court had addressed itself at least four times to this entity that I know of, *Crocker* v. *Malley,* 1919, *Heck* v. *Malley,* 1924, *Morrissy* v. *The Commissioner* in 1935. And as recent as the Navajo Savings & Loan case in 1980. There are enumerable Federal district courts dealing with this issue, State supreme courts, State courts and even the tax courts.

This is an exclusion. This type of trust has been excluded from the 1959 Prestatement of Trusts, and in fact the courts have said that it's not even a trust at all it is in fact a contract in trust form. And the question I have here, is how many times does the wheel have to be reinvented?

TRANSFER OF ABILITY OF INCOME PRODUCING ENTITY TO BUSINESS ORGANIZATION

The Supreme Court has talked about the reduction of taxes. It has addressed itself many times to it, once in 1935 where it says the taxpayer has the legal right to reduce taxes by any means which the law permits. The reference interestingly enough is to a Michigan case which was rendered and decided in 1973, dealing with this specific issue. The courts have long affirmed the taxpayer

has the right to a business entity. He has been denied innumerable times. The Supreme Court recognized again in 1943 that the proposition that a business entity may engage in any substantial business activities, or have a legitimate business purpose and may not be deemed a sham.

Now, what we're talking about here is specifically that people in your area, sir, are trying to obey the law, follow the law. They are not yet even legal tax protesters, but they are people who are definitely trying to study and research the law that is very complex and complicated. The code alone is very complex because there are many companies whose sole purpose is to explain and understand the code, and to give that information to appropriate people.

We're not talking about an assignment of income here. We're talking about a transfer of ability of income producing entity to a business organization. For example, I know it's not uncommon for a farmer, for example, to form a corporation and put his farm proceeds, or his farming proceeds into the corporation, but retain the land in his own name, and thereby lease the land to the farm operation. And of course when I first heard of that I said, "Gee, why would anyone want to do that type of thing?" And of course it's for the reduction of taxes.

The pure common law trust, as being used by many of your constituents, gives the advantage of a corporation without the disadvantages. So the question then comes down is that if it's a legal entity, then how should it be taxed? Well, I have prepared for you a 13-page document, not only on the legality of it, but how it should be taxed.

At least the Supreme Court addressed itself in 1935 in the *Morrissy* decision as to how it would be and it's been reaffirmed in the Kitner regs, which were adopted by the Service in 1960. In 1981, curious enough in the *Eltremstret* tax decision, the Court and the Service agreed that, one, you could have a trust that could have income producing business activities, and two, not being taxed like in an association or a corporation. And that is the entire issue that we are dealing with and talking about.

GRANTOR AND BUSINESS TRUSTS

Even the code finds a definition between the grantor trust, which is defined in the 1959 restatement of trust, and the common law or business trust. When you examine 1015–A and B of the code it deals specifically, with it. Someone who wrote the code must have known that there were other kinds of trusts other than grantor trusts. The 10001 tax change deals with this as well, when it excludes from the lifetime exchange an issue in trust law dealing with units of beneficial interest, or trust certificates. And it names it so specifically.

Now, many of our people that we represent have gone through, and I have two cases here for your provision, in which they have tried to go to the Service and the in-service appeal and to explain the situation or the propositions that they are following in arranging their affairs to produce the tax, which is not illegal, or immoral.

And the cases that we have here are being totally disregarded. They are being arbitrarily collapsed. All the income is being put back onto the individual exchanger who created it, and therefore charged huge tax deficiencies, without hearing it. The question that we always have said here is we want someone to talk with in order to bring our position forward. When we talked to the Service it appears as though, no disrespect to them, but it appears as though they turn a deaf ear, they don't hear us. We've had instances where the agent looks at the form and says "Another one of those" and throws it down on the table and totally disregards it and doesn't read what the words say. We happen to know it isn't another one of those that we're referring to, because we know exactly what they are referring to. So it is in this area that we are saying it is not illegal to reduce taxes. As a matter of fact, as we all know, we can hardly believe things we read in the newspaper, but an article by Jack Anderson talks about our rich and our super rich. And he names specifics, people who have not paid taxes in years, specifically names who are well-known names. For example, when he was alive, Vice-President Nelson Rockefeller, he said, paid no sales tax in 1970.

Senator DECONCINI. You mean income tax?

Mr. RIPLEY. Income tax, correct. Also, John E. Rockefeller III when he was alive said he paid 10 percent as a matter of personal principal, but I admired him for, until I examined the returns and observed that there's not a 10 percent for my personal principal that I would like to pay.

He talks about others like the Hunts, how they have lived for years. Yet if you look in the Dallas telephone directory, you'll find enumerable trusts listed at the same address. Jack Anderson as I quote him, he said, "We do not single them out for criticism they have made use of the law, and that is their right."

And our question there for them, if it is their right, is it not ours? See, that's all we're asking. And that we sit down and constructively look at the legal aspects and the great amount of work and research that has gone into this particular subject.

Because I'm sharing my time I'm hurrying and cutting out a lot of this stuff, but I would like to thank you very much for your kindness in listening to us. The subject that I normally talk in this area takes 2 days, so 10 minutes is hard to cram into this length of time. But I would hope this, sir, and I would leave you with this thought: We hope that you, sir, are not a voice crying in the wilderness. Thank you.

Senator DECONCINI. Mr. Ripley, thank you. I'm more than happy to entertain any additional testimony you care to prepare for the record. We'll leave the record open, because of the shortness of time this morning, and it will be treated just as if you had made it here.

Mr. MacPherson, did you want to testify?

STATEMENT OF DONALD W. MAC PHERSON

VIOLENCE BY INTERNAL REVENUE SERVICE

Mr. MACPHERSON. Yes, Senator.

I appreciate Mr. Ripley sharing his time and I would request leave of the Senator also to supplement the record at a later time.

Senator DECONCINI. I'll be glad to do that.

Mr. MACPHERSON. I'm an attorney from Phoenix, Ariz. I'm here today because I'll be out of town Friday, I'll have someone from my firm testify further on Friday. I suppose I could go at some length and tell the Senator quite a few horror stories, however I'll just whet your appetite with a few examples. For example, the Olivers in Alaska had their windows smashed in by billie clubs, I personally witnessed that.

Senator DECONCINI. Who smashed them in?

Mr. MACPHERSON. Treasury agents.

I personally heard the assistant U.S. attorney tell these Treasury agents to avoid any conflict. I was trying a case in Fairbanks, Alaska. What happened was the Olivers came to watch that case. While they were watching the case, the Olivers had had a problem with the IRS, the IRS wanted to seize their car in the parking lot. So they seized it, they chained it to a pole or whatever; the Olivers decided to stage a sit-in, they got in the automobile. The Treasury agents were quite frustrated by the tactic, they went to the assistant U.S. attorney. At the time I was in this office and complained, and the assistant attorney said they've got to leave sometime, they've got to go home, they've got to eat, go to the bathroom, just wait and let them leave, avoid any conflict, avoid any violence.

As we were leaving that day's trial around 5:30, 6 p.m. we observed a confrontation in the parking lot. The Olivers were in the car, the private individual who was to tow away the car refused to tow it away on request of the Treasury agents, because he didn't want to be liable for any harm that might take place to the individuals. The agent became frustrated because they wanted to prevail that day. They therefore walked up with a billie club in hand and proceeded to smash in the windows. There are photographs that I can submit to the Senator at a later time, that depict this event quite well. They then proceeded to drag these individuals across broken glass, and then thereafter towed away the car.

Well, I would refer the Senator to Congressman Hansen who was very much aware of this situation. I think he covers it perhaps in his recent book, together with many of the horror stories that have taken place in other Western States, most especially recently Colorado and Idaho. But that's just an exampe, and maybe that's an isolated example of violence, but it's an example of the kind of agency that we're dealing with.

REFUSAL OF AN AUDIT

The second example, much milder is a client of mine who very recently refused an audit. He's got every right under the law to tell the IRS, "Hey, I don't want to be audited."

The Internal Revenue Service, and I know this because I received the documents from the Internal Revenue Service pursuant to the

Freedom of Information Act request. They labeled him as a tax protester or illegal tax protester, because he stood on his rights. The man had filed a return, had paid his taxes, but because he marches to the sound of a different drum that is, he knows his rights, he knows a little bit about what the Constitution provides, he knows to stand on his rights, because he simply said thanks but no thanks I don't want to be audited, the Internal Revenue Service assumed, just automatically assumed that he was some kind of illegal tax protester. We then proceeded to have the record corrected pursuant to the Privacy Act of 1974 and to date we have received no action by the district director.

REQUEST FOR REDRESS

Last, I'd like to tell you about myself. I'm an attorney that tries many criminal tax cases, many so-called illegal tax protester cases, and also other types of civil and criminal tax cases. I also speak on occasion, as I am today. I'm today exercising my first amendment right, freedom of speech and also my first amendment right to petition my Government for redress. I'm bringing this petition and asking for redress from the Senate and in Congress in general.

Last November likewise I spoke to an assembly of perhaps 300 people, in Houston, Tex. These people would be called by the Internal Revenue Service so-called illegal tax protesters, for the most part. But whatever they are, they were peacefully assembled, in a hotel in houston, Tex. And I peacefully spoke at that meeting, and I didn't advocate the overthrow of the Government by unlawful means. I addressed them on the legal issues much like I'm addressing the Senator today.

MEMORANDUM OF SURVEILLANCE

The Internal Revenue Service surveiled my address and took copious notes and recorded my address. They are probably doing the same today. They're providing to my so-called dossier the very comment that I make today in public. I tell you that because recently I received a memorandum pursuant to discovery under a criminal case, in Texas, a memorandum of surveillance.

Senator DECONCINI. Of you?

Mr. MACPHERSON. Of me right. I have a copy which I submit for the record.

I strongly suggest to the Senator that you do your own Freedom of Information Act, because after this hearing, you may very well see a memorandum of surveillance.

Senator DECONCINI. The memorandum will be inserted in the record.

[The memorandum follows:]

MEMORANDUM OF SURVEILLANCE

In re: Illegal Tax Protesters

Date: November 14, 1981

I attended the Saturday session of the National Patriots Network "The Lawyers Speak". Special Agent Susie Wong and I were present during the entire session from approximately 9:00 a.m. until 5:30 p.m.

Tim Yorgan of the Wisconsin Society of Educated Citizens was Master of Ceremonies. The speakers for the day were:

Speaker	Topic
Arthur Tranakos	How to Maintain Your Records for Use in Trial and How To Trip Up the Government Agents
Don MacPherson	Types of Government Attacks vs the Patriot Proper Responses
Mike Parham	The Theological Concepts of Justice and Law
John Matonis	Defense Techniques Against Various Government Attacks
Scott McLarty	Decision Making in Criminal Cases
Gordon Stebbins	Playing Games with Judges, Prosecutors and Special Agents

Attached to this memorandum are the tape recordings of the above-listed speakers made by the Network at the time of the speech.

Jan Parham
FTS: 527-5642

MEMORANDUM OF SURVEILLANCE

In re: Illegal Tax Protester Project

Date: November 15, 1981

Place: Doubletree Hotel
Drummett Blvd.
Houston, Texas

I attended the Lawyers Technical Session of the National Patriots Network presentation on the final day of the seminar. The seminar was from approximately 9:00 a.m. until 5:15 p.m. and I was in attendance during the entire session.

I heard the following speakers and the following topics:

Speaker	Topic
Arthur Tranakos	The Tax Lawyer Speaks: How to Present the Case From a Tax Standpoint
Joe Izen, Jr.	Unknown
Don MacPherson	Pre-Trial Motions and Over-All Trial Strategy
John Matonis	Continuances, the Speedy Trial Act and TV Cameras in the Courtroom

Mike Parham	Home Church Procedure in Taxcourt
Scott McLarty	Jury Selection, the Jury Charge, Evidentiary Matters and Disqualifying Judges
Gordon Stebbins	New Developments-My Progress on W-4
Jerome Daly	Defending The Home Churches in Related Business Activities

On order is the tape-recording made by the network of John Matonis. This tape will be submitted upon my receipt. Attached is a synopsis of the speakers and their topics. I was the only Special Agent attending this session.

Jan Parham
FTS: 527-5642

MEMORANDUM OF PATRIOT NETWORK SPEAKERS

In re: Illegal Tax Protester Project

Date: November 15, 1981

ARTHUR TRANAKOS: Tranakos spoke of recent cases he has tried in the tax protest area. He suggested to the other lawyers that they use a defense based on a different method of accounting than used by the taxpayer on his filed return. He told of his experience in a trial where he used this defense and subpoenaed the Regional Counsel head as a defense witness. He put him on the stand and asked him if the percentage of completion method of accounting was a generally accepted method. He said that Regional Counsel stated it was and yet the Judge still would not let them use that method of computation as a defense to the Government's method of computation used in the criminal prosecution recommendation.

Mr. Tranakos also suggested that the Patriot Network needed to find people in the area of tax law and accounting who are willing to get involved in the fight and get them qualified as an expert witness and start using them in trials.

JOE IZEN, JR.: Izen spoke about his experiences in defending criminal and civil tax cases. He said that he had not lost any case that he had been involved with from its inception. He talked about demanding that each question to clients (the taxpayer) be put in writing by the agent (Revenue or Special) so that the Agent cannot say that the taxpayer failed to answer questions based on the Fifth Amendment claim. He said that unless each question is individually addressed to the taxpayer in writing, they cannot say that the taxpayer failed to answer questions based on his Fifth Amendment right.

In the absence of an affidavit, Izen said, they should not be able to cite you in court for refusing to answer questions. He quoted Wallace vs. U.S., a case in the Eastern District ofTexas (Ft. Worth Federal District Clerk). He also cited Donald Wharton vs. U.S., a case in the Western District of Texas (Waco Federal District Clerk)

He suggested to request an in-camera review since the Government was always doing it. He suggested representing witnesses before a Federal grand jury.

Izen said that a current practice of the U.S. Attorney's office is to state on subpoenas that materials subpoenaed may be delivered to the IRS agent serving the subpoena; he said this is a violation of the law. Grand jury subpoena power is much stronger than summons power.

Fifth Amendment type returns do not sell in Texas, he said. He cited a Los Angeles case, Gail Sanocki to illustrate some point. He said that during 1974 through 1978, the Government did not prosecute anybody with

less that $30,000.00 income til Charles Rice in Dallas. Now they use selective prosecution

The Judges instruct the jurors assuming that the return is wrong. Take the Fifth Amendment protection only on those questions which you really fear. The Tax Court is in trouble and they are moving tax protesters to the front of the docket.

I submit that they are bringing fraud into each case. A 1040 should be given to each prospective juror and asked if this form could incriminate someone if filled out correctly. The juror should be made to respond yes or no. If they respond "no", they are then prejudiced against the taxpayer.

DON MACPHERSON: MacPherson handed out a two-page legal document with different motions listed. He suggested that attorneys file all motions which could be linked with their clients' case to help delay proceedings. He advocates the "Attack" theory and proposes three ways to attack: Dismissal, Delay and Discovery.

I attack the prosecutioner. The Government always makes mistakes. One of your trial strategies might bethat this is a prosecution.

MacPherson cited U.S. vs Dougherty, a Dist. of Columbia Circuit case.

He suggested that you ask for witness testimony a day in advance. He said usuallt Judges give you documented testimony 24 hours in advance, but under Jencks he asked for witness testimony too and he got it.

MIKE PARHAM: Parham talked about the church issue. He said that they needed to get things to the point where they want the church issue being challenged, not the tax issue. He made a proposal that for individuals with a home church and in the situation of not so good income, take your salary and contribute 50 percent back and keep those records (receipts).

Parham said that they way things are now, IRS is challenging the tax issue, not the issue of whether the individual has really established himself and his home as a religious organization and sanctuary.

SCOTT MCLARTY: Get FOIA requests going, it can mean the difference between winning and loosing. Summons enforcement will give you about a two year delay. Then at trial, put the Special Agent on the stand and re-question him about the same facts during the summons enforcement (you should have a transcript of the summons enforcement). The Special Agent might forget his testimony of two years ago and you can trip him up.

The frivilous motion is the one that has not been asked.

File evidentiary motions to get a feel of what the case will be and educate the judge if you are refusing to write in figures on your return based on the Fifth Amendment.

File a grand jury motion if you can.
Do not talk plea until you have filed your motions.
Look at what other lawyers have done in other cases.

Pre-trial Discovery--Get all reports, the Special Agent's, District Counsel's, Regional Counsel's. Order the AUSA to produce exculpatory information.

Keep on-going Brady motion going. Always ask for disclosure of informants, get Special Agent on the stand and make him testify under oath that he does not know the informant (you might find out years later he lied). They have a form, 3949, that they use to start cases and they put that the information was received from an anonymous informant--usually the agent knows the identify of the person informing.

Jury selection--compare your client with the jury (mentally). Try to pick your foreman in voire doire. Jury selection is critical. Decide who the USA wants and you do not want. Let USA strike first, because he might be striking a juror you wanted but were saving in case you didn't have strikes left and the USA will then get rid of an undesirable juror.

Choices--Do I make an opening statement or wait until the government has finished its case and make the opening statement before presenting the defense. Judges like aggressive lawyers--be aggressive.

Jury nullification--NO--unless you know your client will do time any way.

Use experts--Bowie vs. City of Columbia can be used against a charge that the 5th Amendment return is not a tax return.
If you win your case, go to the local press and your client can say this was a test case. If you lose your case, the IkS will publicize that fact widely. They do not publicize the cases they lose.
You can file a motion to disqualify the Judge: it must be accompanied by an affidavit stating good cause.

GORDON STEBBINS: Stebbins' said that the IRS was coming out with a new Form W-4 which allowed up to 14 or 15 exemptions before they were being looked at now as protest-type W-4's. He said this was an indication that their cause was having effect on the IRS and that the IRS was weakening.

JEROME DALY: Daly told about handing out petitions in front of Judges' churches and let the congregation be reading about what a son-of-a-bitch the Judge is instead of the Bible. He said this is sometimes very effective against the Judge and his negative attitudes toward "tax protesters". He said in his particular case when this was done, the elders of the church called him after reading the petition and said they had called the Judge into their chambers to question him about the allegations and were not satisfied with his answers. They told Daly they were on his (Daly's) side and if they could help him, they would.

Daly advocated using petitions and the legal process if it would work, and said that if it did not then there was only one other way--violence.

He talked about being deprived of due process when his license to practice law was taken from him. He said that after his conviction in 1964? he received a notice from the State Bar in 1969 that he had been disbarred. He said that he had not had a hearing or been notified in any way that disbarrment was even being considered.

Jan Parham

Mr. MACPHERSON. Well, we had the meeting divided in really two parts. One was kind of a general. It was open to the public. It was a public meeting, and I suppose the Internal Revenue Service has to surveil to see if individuals are encouraging others to violate the law, which I am not, and just see what's going on in the so-called tax-protest movement. The second part of the meeting was kind of a closed-door session, that was a meeting of attorneys and paralegals to discuss legal strategy, that is how they would approach cases, mainly criminal cases, and also some civil cases were discussed. This wasn't an open meeting to the public, and I suppose if we were advocating some unlawful activity they might need undercover agents. But I discussed legal issues, and again they took copious notes of all attorneys that spoke at that meeting. I think this is probably a violation under the Privacy Act and Freedom of Information Acts, in that they are taking notice of how we exercise first amendment rights, where their notice is taken not pursuant to a criminal investigation. If they criminally investigate me, that's different. They're placing a chilling effect on myself and other attorneys. The primary purpose of this meeting was to get attorneys together and discuss the legal issues that were arising by way of these cases. And we discussed those legal issues. There were per-

haps 12 attorneys from all over the Nation in attendance. There were six who spoke at the general meeting, and six or eight spoke at the closed session. They had a female special agent who went to the closed session, saying that she was an accountant interested in these issues, and they listened and they tape recorded and they prepared the memorandum.

Now, I'm outraged by that personally. I suppose it's one thing if they find from the first speech or from their attendance that we are advocating some allegedly unlawful conduct of our clients or of other third parties. But a principal hearing that we were discussing definite tactics, the kind of motion I file openly in court, that I filed in all my cases. They're already on the public record. The kind of strategies we have.

Once they hear that, what's the purpose of having that memorandum? What's the purpose of having a file on Mac MacPherson from Phoenix, Ariz., who represents these people in open court? Hey, that's no purpose, unless it's a dossier. And I think the Senator probably is familiar with what happened back not too long ago, about 10 years ago, when the Nixon administration had political enemy lists. There were Senate hearings regarding that, I've read those Senate hearings. Senator Goldwater was interested. Senator Montoya too, I believe. And I think we have the same thing. It is just 10 years later.

Senator DECONCINI. Your point is whether or not that's illegal on their part? Or that: Does Congress know that it occurs? I don't follow.

Mr. MACPHERSON. I realize the question of legality myself I suppose, when the attorneys and myself filed some kind of petition for redress with the court by way of some kind of legal action. And I think we plan to do that.

Senator DECONCINI. What would concern me is the ethics first of all, from the standpoint of trial lawyers violating an ethical code if in fact they were there to discuss active cases, and your strategy. Then, of course, what they do with the memorandum, and if, in fact, it was used to work up a case toward you or any of your clients that was detrimental to their rights.

Mr. MACPHERSON. Well, we know that the record is on file with the Internal Revenue Service. Certainly the Internal Revenue Service would be outraged and probably attempt to charge me with some alleged crime, if under some trickery on my part I snuck into a strategy session of Internal Revenue Service attorneys and paralegals.

Senator DECONCINI. Do you have a copy of the memo?

Mr. MACPHERSON. Yes, I do, and I'll submit that.

Senator DECONCINI. Can you share that with us?

Mr. MACPHERSON. My time is just about up.

INFORMING THE TAXPAYER

Let me close by making reference to what I think is really one of the major problems, and that is that the taxpayers are not fully informed of their rights and that if the Internal Revenue Service is telling the truth they are at best telling half-truths.

One of the examples I like to use is the audit request letter. At best it's a half-truth, at worst it's a complete lie. It indicates, I quote from it and I'll submit it to the Senator, "The law requires taxpayers to substantiate all items affecting their tax liabilities when requested to do so."

The law doesn't require that. There's no law whatsoever that requires that.

The other side, the second page indicates, "However, if taxpayers do not substantiate items when requested, we have to act on available return information that may be incomplete."

In other words there's no law that requires me as an individual taxpayer to disclose my personal books and records, to disclose the things in my home, the personal things of my family. No law whatsoever. Taxpayers have rights under the fourth and fifth amendment especially of the U.S. Constitution. It's all bluff, they know we've got rights, or if they don't know we who are servants of the people, should tell them.

Senator DECONCINI. I'm not a tax lawyer, Mr. MacPherson, but I'm under the impression that the courts have indicated the Internal Revenue Service does have the right to certain records of the taxpayers when they are auditing or investigating, if you want to call it that, to determine whether or not the taxpayers have paid their allotted tax. Is that incorrect?

AUTHORITY OF INTERNAL REVENUE SERVICE

Mr. MACPHERSON. That's incorrect as a general statement. Let me clarify it.

The Internal Revenue Service has authority to request an audit. The Internal Revenue Service has authority to ask a taxpayer to come in with the books and records. The Internal Revenue Service has authority to summon, with an Internal Revenue Service administrative summons, taxpayers for their books and records, and personal testimony. But the Internal Revenue Service has no authority whatsoever, without first resorting to the courts by way of petition to enforce, with a U.S. district court, has no authority to force the taxpayer to so comply.

Senator DECONCINI. Can't they issue summons?

Mr. MACPHERSON. They can issue summons. They can't make you comply.

Senator DECONCINI. Aren't those binding, the summons?

Mr. MACPHERSON. If you're an Internal Revenue Service agent, you issue me a summons, I could go down to your office at the time and place appointed by the summons with the books and records. And if I choose to stand on my constitutional rights and exercise them in good faith and say I object, fourth amendment, I object, fifth amendment, you can ask me particularized questions and I can continue to object. You have no authority and the U.S. Supreme Court recognizes this.

Senator DECONCINI. Without going to the Court?

Mr. MACPHERSON. You have to pierce the Court. *Risman* vs. *Kaplan,* Supreme Court, says an Internal Revenue Service special agent, or any agent, has no authority to force the taxpayer to comply.

You've got to go to the district court and show probable cause to overcome the fourth amendment barrier. Then if you show probable cause you still might have a fifth amendment barrier. The Court will say petition is in force. Then I still have ample opportunity to go back. They'll say I have to go back to the Internal Revenue Service and object specifically to specific questions. That's the case law. And I should limit that to personal books and records in the hands of the taxpayer. Not talking about corporations or other entities. But that covers the majority of the population in this country. We're talking about most taxpayers. And they don't know that, and why don't they know that? Congress hasn't told them. Congress wrote several years ago a citizens' guide to the Constitution of United States of America. You can submit, petition, and request that the Congress require the Internal Revenue Service to provide information to taxpayers that they know that they've got these rights. Otherwise the rights are whittled away by the court system and by the Internal Revenue Service. If they're not exercised they die on the vine, and that's what really happened.

PRIVACY ACT NOTICE

Another example is the Privacy Act notice. It's not adequate. Congress was concerned about individual rights when they passed the Privacy Act of 1974. They were concerned about the Government always requesting information of the citizen, about the potential self-incrimination, about fourth amendment rights to privacy. They passed the Privacy Act notice, but the Internal Revenue Service doesn't comply with it. What they do, they skirt around the issue and say, "Well, we've got a right to ask for this information" and they make it appear—I won't read the whole thing. They make it appear that when they request an audit they'll send the Privacy Act notice, and they get you to believe that the law again requires you to comply, and that you must comply or you're violating the law. This is a falsehood. And I know I've run out of time.

PURPOSE OF HEARING

Senator DECONCINI. The record will remain open for anyone else who wants to put in testimony. I'm sorry the hearing will have to come to a close.

I can't help but think how I got started on this hearing. A number of citizens brought their complaints to me, one being an old friend of mine, Dr. Gene Burns, who has constantly been giving me information on various citizens. Some of them came on their own, with complaints of problems with the Internal Revenue. I'm most grateful to the citizens that were willing to petition their elected representatives.

I don't want to leave the impression that I can change this totally. That's not the purpose of the hearings, but it's the purpose to get public testimony, to review it carefully and potentially to offer some amendments and some constructive changes in the law as it relates to the Internal Revenue Service and it's application to our Internal Revenue Code.

As you know, I'd like to see the whole thing scrapped and start over, but that's a different story at another time.

SUBCOMMITTEE RECESS

In any event, the subcommittee will stand in recess until Friday, June 4, at 9 a.m. in Phoenix, Ariz., where we'll continue to receive testimony on Internal Revenue Service activities in Arizona.

I want to thank you people for being here.

The hearing in Phoenix will be in the Maricopa County Board of Supervisors hearing room downtown on Washington Street.

[Whereupon, at 12:15 p.m., Wednesday, June 2, the subcommittee was recessed, to reconvene in Phoenix, Ariz., at 9 a.m., Friday, June 4.]

97-646 O - 83 - 8

ADDITIONAL MATERIAL SUBMITTED SUBSEQUENT TO THE HEARING

[CLERK'S NOTE.—By direction of the chairman, additional material submitted will be inserted in the record at this point:]

LETTERS AND ATTACHMENTS FROM GEORGE H. PFAFF, PFAFF BUILDING SERVICES

May 19, 1982

Office of Dennis DeConcini
20 East Main, Suite 105
Mesa, Arizona 85201

Attn: Margot Myers

Dear Ms. Margot Myers:

In answer to your letter of May 12, 1982, I hereby request that my letter to Senator DeConcini dated March 31, 1982 and attachment be entered as written testimony at the Oversight Hearings on the Internal Revenue Service.

I also request that the attached summary, which is in reply to letter of May 7, 1982 from Prescott A. Berry, District Director to Senator DeConcini, also be entered as written testimony.

Thanking you for your cooperation, I remain,

Very truly yours,

George H. Pfaff

George H. Pfaff

March 31, 1982

Sen. Dennis Deconcini
3230 Dirksen Senate Office Bldg.
Washington, D.C. 20501

Dear Sen. Deconcini

In the Wall Street Journal dated March 29th under the heading "Collection Crisis", there is stated, in part, the following:

"Roscoe Egger, Jr., the IRS commissioner, says that the public looks on the IRS as "highhanded predatory jackals" who have little regard for individual rights. He wants to change that, he says. While "we must make certain that those who seek a free ride at the expense of the law-abiding majority are made to pay," he says, the agency also will show "Compassion for the honest taxpayer."

If you did not make payment with your 1040, the following was stated: "For a while, you would receive notices asking for full payment; the fourth and final one would sternly warn that if you don't settle quickly, the IRS may grab your car or your house in 10 days."

Attached hereto is stated the kind of treatment I received from the "compassionate" IRS.

I believe that this should be brought to the attention of Mr. Roscoe Egger, Jr. the IRS commissioner.

Very truly yours,

George N. Pfaff

In 1974, I purchased a Limited Partnership interest in the movies "Call of the Wild with Charleton Heston and"Valdez Horses" with Charles Bronson. I felt that these were good investments for the benefits and excellant chance for extra income.

Since 1977, I have repeatedly signed extentions for the right to audit.

I was informed by the General Partners that in 1976 or 1977, the IRS changed the rules governing movies and made it retroactive, making my investment subject to audit. Also, the distribution fee paid to the Distributor was not allowed. The IRS audited the Distributor and said "his costs were not that much" and supossedly allowed his costs of distribution. This made us liable for income that was never received.

This year, I received a notice for back taxes for the years 1974, 1977 and 1978. I then sent the IRS a $100.00 payment and requested that I be allowed to make payments for the following reasons.

I have been paying estimated income taxes since 1945 and was never late with my payment. I was unable to generate any income as a General Contractor for over one year.

During 1981, I had medical expenses in excess of $10,000.00.

I was unable to qualify for unemployment insurance or food stamps. I have never collected anything of the welfare nature.

That my cash reserves were getting low and if I paid the taxes in full, I would not have sufficient funds to support myself.

I did not receive any answer to my request to make monthly payments. I did receive a notice that if I did not pay within 10 days, they would take my vehicles and put liens against my property.

I then called the Phoenix office and asked why I could not make monthly payments because of the above situation. I was told that monthly payments could be arranged, but that they would still file liens on my property. I explained that if this was done, it would possibly affect my credit rating and put me out of business. I also explained that I

have never in over 30 years of business been late in paying any of my bills. I ask them how I could put food on the table and was told "they didn't know". Since I could not afford to have ANY liens filed against me, I paid the full amount due.

I forgot, I also told them that I had over $100,000.00 of real estate for sale and as soon as a sale could be made, I would pay in full.

The amount of money involved was approximately $3,500.00 including tax, interest and penalty.

After payment, I received a notice that I was to appear in Phoenix regarding payment. I returned their notice with the notation "this has been paid".

I do not believe that any person should have to be treated in this manner by the incompetant, dictatorial bureaucrats of our government.

The Honorable Dennis DeConcini
U. S. Senator
20 East Main, Suite No. 105
Mesa, Arizona 85201

Dear Senator DeConcini:

This is in response to your inquiry dated April 19, 1982, regarding the account of George H. Pfaff for the tax year ending December 31, 1974.

Mr. Pfaff's original request to the Ogden Service Center was to enter into an installment agreement. The case file was then sent to the Phoenix District Office. A letter was sent to Mr. Pfaff requesting that he contact our office and provide a financial statement. The financial statement would be analyzed and a determination made as to whether an installment agreement was appropriate. If Mr. Pfaff did not wish to have a Notice of Federal tax lien filed, he would be required to post a bond or other collateral securing payment of the tax in accordance with Internal Revenue Code Section 7101 and Treasury Regulation Section 301-7101-1. He decided to pay the full amount of tax due and payment was received.

This information is provided in accordance with Section 6103(c) of the Internal Revenue Code and within the constraints of Sections 7213 and 7217 of the Code.

If Mr. Pfaff has any further questions, he should contact Mrs. Wells at 261-3320.

Sincerely,

Prescott A. Berry
District Director

May 19, 1982

Senator Dennis Deconcini

In a letter dated May 7, 1982 addressed to you from Prescott A. Berry, District Director IRS, Phoenix, Arizona, the second paragraph reads as follows:

"Mr. Pfaff's original request to the Ogden Service Center was to enter into an installment agreement. The case file was then sent to the Phoenix District Office. A letter was sent to Mr. Pfaff requesting that he contact our office and provide a financial statement. The financial statement would be analyzed and a determination made as to whether an installment agreement was appropriate. If Mr. Pfaff did not wish to have a Notice of Federal tax lien filed, he would be required to post a bond or other collateral securing payment of the tax in accordance with Internal Revenue Code Section 7101 and Treasury regulation Section 301-7101-1. He decided to pay the full amount of tax due and payment was received."

I never received a letter from the Phoenix office. The first contact I had was the receipt of two Form 4840's, which are attached. They state that a tax lien would be filed and my personal possessions would be seized in 10 days.

On March 23, 1982, I called the Phoenix office and informed them that I had the money to pay the taxes for 1974, 1977 and 1978 in the amount of $3,613.49, which included interest and penalties. I also explained that I was a Building Contractor and had not had any income since August, 1980. That I also had medical expenses in 1981 in excess of $10,000.00. That I had to completed homes, lots and a commercial building worth in excess of $180.000.00. If I paid the $3,613,49, it would deplete my cash reserves and I would be unable to put food on my table.

I told them that I had requested the Ogden office to allow me to make monthly payments until I was able to sell one of my two homes and then I would pay up in full. They told me that they had received this request from Ogden and that a payment schedule might be arranged but they would still file a tax lien.

I was not told that any other arrangement would be made, only that a tax lien would have to be filed against me, which would destroy my business credit and therefore put me out of the business of contracting. I would have been pleased to give them a note or a mortgage on the homes that I have for sale.

I told them that I could not afford to have a lien filed against me and that I would have to pay the amount due and worry about supporting myself with the cash reserves that were left.

I again wish to state that I do not appreciate this kind of treatment and the implication that I was not trustworthy. I have been in the contracting business since 1945 and I have always paid all my obligations promptly. However, due to the market conditions we have been unable to obtain any business or sell the two homes we have built. I also never expected the excessive medical bills recently incurred.

I sincerely believe that this treatment is entirely uncalled for and that every effort should be made to prevent this kind of treatment to continue.

George H. Pfaff
1588 Country Shire Ave.
Lake Havasu City, Arizona 86403

Department of the Treasury
Internal Revenue Service

001132

Past Due
Final Notice
Read Carefully

Date of this Letter
03-12-82

If you inquire about your account, please refer to these numbers or attach this letter

Taxpayer Identifying Number
▶ 290-16-0022 UD

Document Locator Number
▶ 29247-005-01605-2

30-7712

GEORGE H PFAFF
1588 COUNTRYSHIRE
LAKE HAVASU CITY , AZ 86403

J231 504 929. 8601

Although notices and demand have been made for payment of your Federal tax liability shown below, we have no record of receiving the amount due. This is your final notice before we proceed with enforcement action.

To prevent such action, send us, within 10 days from the date of this letter, your check or money order for the total amount due, payable to the Internal Revenue Service. Show your taxpayer identifying number (social security or employer identification number) on it and enclose this letter to assure prompt and accurate credit. An envelope is enclosed for your convenience. The copy of this letter is for your records.

If you have recently paid the amount due but your payment has not been credited to your account, or if you cannot pay this amount in full, contact the office shown below within 10 days from the date of this letter. The telephone number is shown on the enclosed notice.

If we do not receive your payment or if you do not contact our office, enforcement action may be taken at any time after 10 days from the date of this letter without any further notice to you. A Notice of Federal Tax Lien may be filed which constitutes public notice to your creditors that a tax lien exists against your property. Salary or wages due you may be levied upon, as provided by section 6331 of the Internal Revenue Code, by serving a notice of levy on your employer. Bank accounts, receivables, commissions, or other kinds of income you have are also subject to levy. Property or rights to property, such as automobiles, may also be seized and sold to satisfy your tax liability.

Enclosures:
Envelope
Copy of this letter
Telephone Number Notice

Chief, Collection Branch

Reply within 10 days
to avoid enforcement action
and additional penalties.

Tax Form Number	1040
Tax Period Ended	12-31-77
Balance of Prior Assessments	427.47
Late Payment Penalty	1.60
Interest	6.14
Total Amount Due $	435.21

Reply to: INTERNAL REVENUE SERVICE
2120 NORTH CENTRAL AVENUE
PHOENIX, AZ 85004

261-3461

Form 4340 (Rev. 3-81)

Department of the Treasury
Internal Revenue Service

001130

Date of this Letter
03-12-82

Past Due
Final Notice
Read Carefully

If you inquire about your account, please refer to these numbers or attach this letter

Taxpayer Identifying Number
290-16-0022 UD
Document Locator Number
29247-005-07100-2
30-7812

GEORGE H PFAFF
1588 COUNTRYSHIRE
LAKE HAVASU CITY , AZ 86403

J081 504 929 8601

Although notices and demand have been made for payment of your Federal tax liability shown below, we have no record of receiving the amount due. This is your final notice before we proceed with enforcement action.

To prevent such action, send us, within 10 days from the date of this letter, your check or money order for the total amount due, payable to the Internal Revenue Service. Show your taxpayer identifying number (social security or employer identification number) on it and enclose this letter to assure prompt and accurate credit. An envelope is enclosed for your convenience. The copy of this letter is for your records.

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Enclosures:
Envelope
Copy of this letter
Telephone Number Notice

Chief, Collection Branch

Reply within 10 days
to avoid enforcement action
and additional penalties.

Tax Form Number	1040
Tax Period Ended	12-31-78
Balance of Prior Assessments	153.68
Late Payment Penalty	.60
Interest	2.31
Total Amount Due $	156.59

Reply to: INTERNAL REVENUE SERVICE
2120 NORTH CENTRAL AVENUE
PHOENIX, AZ 85004

Form 4840 (Rev. 3-81)

INTERNAL REVENUE SERVICE PROCEDURES AND OPERATIONS IN ARIZONA

FRIDAY, JUNE 4, 1982

U.S. SENATE,
SUBCOMMITTEE ON TREASURY, POSTAL SERVICE, AND GENERAL GOVERNMENT,
COMMITTEE ON APPROPRIATIONS,
Phoenix, Ariz.

The subcommittee met at 9 a.m., Board of Supervisors Auditorium, Phoenix, Ariz., Hon. Dennis DeConcini presiding.

Present: Senator DeConcini.

DEPARTMENT OF THE TREASURY

INTERNAL REVENUE SERVICE

STATEMENT OF ROSCOE L. EGGER, JR., COMMISSIONER

ACCOMPANIED BY:

PRESCOTT BERRY, DISTRICT DIRECTOR, ARIZONA

THOMAS CARDOZA, REGIONAL COMMISSIONER FOR WESTERN REGION

PURPOSE OF HEARINGS

Senator DECONCINI. Good morning. The Senate Appropriations Subcommittee on Treasury, Postal Service and General Government will come to order. This is the second day of our hearings on activities of the Internal Revenue Service in Arizona. Our first hearings were held in Tucson, Wednesday, for half a day. As the ranking minority member of this Appropriations Subcommittee, I'm delighted to be in Phoenix to chair these hearings and to hear from more than a dozen outstanding public witnesses who have taken time out of their busy schedules to come forward to tell the committee about their professional and personal experiences with the Internal Revenue Service in Arizona. As I mentioned in Tucson, I'm hopeful that the information I receive from these hearings will allow me to return to Washington to make decisions about the Internal Revenue Service budget and the possible need for legislative remedies to IRS problems and citizens' problems with the IRS, with the particular interests and concerns, of course, of Arizona taxpayers.

ADMINISTERING THE TAX LAWS

I am also happy to note that in addition to our public witnesses, we are once again honored to have with us Mr. Roscoe Egger, Jr., Commissioner of the Internal Revenue Service, Mr. Prescott Berry, IRS District Director, Phoenix, Ariz., and Mr. Thomas Cardoza, IRS Regional Commissioner, San Francisco, Calif.

Gentlemen, I thought that the hearings in Tucson were most informative, at least to me. I trust it gave you a firsthand feel for some of the major concerns in the minds of Arizona taxpayers about the way IRS does its difficult, unpopular job, at least, in the State of Arizona. Frankly, I believe that many of the problems that were raised in Tucson could have been resolved by IRS with a little more compassion and with a little more good judgment by some IRS personnel. I realize that there are two sides to many issues. It seems to me that the IRS still has a long, long way to go administratively to administer our tax laws before the taxpayers feel that they are dealt with fairly and without intimidation.

SUBCOMMITTEE PROCEDURE

I want to start off this morning's hearing by allowing Commissioner Egger to make a brief opening statment or to comment on the testimony that was received Wednesday, as well as Mr. Berry or anyone else. Before I do that, however, I do want to advise the public that is here that anyone who is not a scheduled witness today, but who may be interested in appearing at a public forum on the subject matter of Internal Revenue Service, please leave your name and address and your phone number with Margot Myers, who sits at my left here. She is on my staff here in Phoenix.

Due to time constraints, we will not be able to have a total public forum today, as the purpose of these hearings was not to be an open, public forum. Although I have conducted numerous public forums, and I am more than happy to do so on IRS issues. I think it's important for citizens to have an opportunity to have their opinions expressed. Certainly it helps me in my job.

However, we have today a number of people who have come to us over the past several years with complaints and problems. Quite frankly, that makes up the bulk of our list of witnesses here, coupled with professional people who will testify as to their experiences.

SIGNING OF WAIVERS

I want to ask any of our public witnesses who intend to talk about a specific case, would you please sign the waiver which we have here. That will allow us to discuss your particular case in these hearings and for the IRS to respond to your concerns for the public record, if necessary.

We want to continue to work with people who do not have pending criminal cases, if we can assist them in getting information from the Internal Revenue Service. Also if your tax case involves a joint return, your spouse will also have to sign the waiver forms.

Mr. Mills is on my right, the minority staff director of the subcommittee. He has those forms.

STATEMENT OF ROSCOE EGGER, JR.

APPRECIATION FOR OPPORTUNITY TO DISCUSS PROBLEMS

Senator DE CONCINI. Mr. Egger, thank you once again for being here. Mr. Berry and Mr. Cardoza, thank you too. If you care to make a statement, please proceed.

Mr. EGGER. Yes, I'll be fairly brief, Senator DeConcini. First, I'd like to say generally that the opportunity to sit in these hearings and similar hearings elsewhere does give us a firsthand opportunity to listen to the complaints by taxpayers, and hopefully from time to time, a compliment. I recognize that most taxpayers—we deal with some 95 million of them every year—that most of them do not have experiences which motivate them to come forward in a public hearing to chastise us, but that those who have had a less than pleasurable experience are the ones who would typically want to be heard on this. And, of course, they're the ones that we need to hear.

But I would certainly hope that you and others would recognize that that in no sense is simply a measure of the other 95 million plus people who didn't come to the hearing and talk about their own experiences. These hearings are extremely helpful, and particularly the format of having the individuals who wish to talk about their own cases sign waivers.

So often, people want to talk about their individual situations and do not recognize that under the law, we are simply not permitted to respond because of the disclosure limitations on us. So with the waivers in this particular case, we will have an opportunity to present to you the full facts in each case as we see them so that you can have all of the facts and circumstances in front of you as a means of making your judgment about any individual case which may be discussed here.

COMPUTER NOTICES

I would like to point out that in the course of these hearings and in others, some issues have been brought out, two of which I'd like to just refer to briefly and to point out the fact that we had, through our Taxpayer Ombudsman program identified these two areas as having difficulties that needed attention. One of them is in computer notices, concerning the problems that come about when taxpayers write back after receiving a computer-generated notice, and the second notice comes out before they get a response to their letter. We are having some difficulties in the service centers with dealing in this particular area. The principal reason is that a good bit of our equipment is 17 years old, and as you well know—because it's a part of our fiscal year 1983 budget—we have made every effort to try to get the resources with which to make the necessary improvements. And with the fiscal year 1983 budget proposals, I think we will have that opportunity. So that's one area where that can be extremely helpful to us in upgrading our ability to deal with massive amounts of material and detail in our service centers.

VERIFICATION OF TRAVEL EXPENSES

The other area is one that was brought out by Mr. Leo Shusta in his and his wife's testimony in Tucson, and that one has to do with some need for a safe haven, if you will, or some general ground rules concerning the verification of travel expenses. I'll recall to your attention that back in the late 1960's, the mood of the Congress was to demand a very detailed recordkeeping on the part of every taxpayer. They wrote the law in that fashion and have not yet seen fit to change it, so that we are walking between Scylla and Charybdis, trying to enforce the statute the way it's written and at the same time, to be as reasonable as we can be concerning the necessity for verification of every single item in the case of taxpayers' travel expenses, particularly people who work away from home regularly such as Mr. Shusta, who is a railroad engineer, and people in the construction business and that kind of thing.

We recognize that this is an area that needs change, and we're going to do everything we can do. We already have a study underway to try to do something about it so that we can cut down the number of times we need to look at returns and the number of records that taxpayers are required to keep.

So I think these hearings are bringing out the kinds of things that we all need to give attention to, and I congratulate you for holding them here in Arizona, so that the taxpayers in this State will have an opportunity to assure themselves that their voices are being heard and that we are making every effort to do something about those problems.

PROPOSALS FOR IMPROVEMENT IN COPING WITH WORKLOAD

Now, I'd like just very, very briefly to refer to one or two other circumstances and things that we're dealing with at the moment. I've already referred to the fact that our fiscal year 1983 budget, which is a direct concern to you, does carry with it some proposals for significant improvement in our ability to cope with the ever-growing workload, primarily in terms of the number of returns we have to deal with and the complexity of the returns, to say nothing of the information returns that we're receiving and dealing with in whole new areas in the tax law, such as the windfall profit tax, which is only 2 years old. So that, I believe, is an area where the Congress may be extremely helpful to us, and we believe that our 1983 budget will give us the kind of leg up that will permit us to——

MANAGEMENT INFORMATION AND INCREASED COMPUTER CAPACITY

Senator DECONCINI. Excuse me, Commissioner. Can you give me a little breakdown on the $75 million request for new computers or for updating your computers? What will that do to prevent some of those problems that were set forth in the Tucson hearings?

Mr. EGGER. Well, it's going to do several things. First of all, part of the $75 million will be for new management information systems and for stepping up the capacity of computers in our service centers to permit us to handle the massive amounts of paperwork much faster.

Senator DECONCINI. Well, are you indicating to us on the subcommittee that if you had this on line, people would not be receiving the second notice when they had responded to the first notice. Would that be eliminated or substantially reduced?

Mr. EGGER. Well, it certainly would go a long way to eliminating it because it would free up the personnel in the service centers who were currently being fully occupied in attempting to deal with the larger volume of work.

EFFECT OF MULTIPLE NOTICES

Senator DECONCINI. Just the other day after our hearing, a lady in Ajo, Ariz., came forward and showed me the first notice and she didn't know what it was. My staff is probably going to be contacting you about it. She showed me the first notice she received. Her response was on a minimal problem. And the second notice came without any idea that a response had been sent. I can't remember the dates, but it was a couple of weeks in between the dates that were on the letters and your second notice. And she was very disturbed.

This lady was a widow who spoke very little English, and she thought Uncle Sam was going to come lock her up. She was really quite upset about it.

Mr. EGGER. Well, we recognize that as a problem. We have had a study under way now for several months to make every effort to deal with that problem. And I recognize that it is a deficiency in the present circumstance.

REQUEST FOR NEW POSITIONS

Senator DECONCINI. One other question on the computer dollars that you're asking for here. You also include the need for 300 new positions.

Mr. EGGER. Yes.

Senator DECONCINI. But you indicated that this computer improvement would free up some people, so what's the justification for the new computer equipment?

Mr. EGGER. Well, the 300 new positions are in our system development area. These are people that we need to write the programs and to put the new system in place.

Senator DECONCINI. And what people would be freed up?

Mr. EGGER. It would be the people working in the service centers who are, in fact, processing the information.

Senator DECONCINI. Just because the computer would take the place of the people?

Mr. EGGER. It will process the information faster and more correctly.

Senator DECONCINI. How many people would you estimate might be freed up?

Mr. EGGER. I would hesitate to give you a figure because it would just be off the top of my head.

Senator DECONCINI. Could you supply that to us——

Mr. EGGER. Certainly.

Senator DECONCINI. Before we go to subcommittee markup, please.

Mr. EGGER. Sure.
Senator DECONCINI. Thank you.
[The information follows:]

COMPUTER SERVICES

In order to modernize IRS's computer processing capabilities, and allow us to meet growth in workload while increasing productivity in tax administration, the Service is requesting an increase of nearly 300 technical staff years in fiscal year 1983. These personnel are computer systems specialists, computer operators, ADP equipment analysts, software specialists, and other skilled professionals needed to design, implement, and operate sophisticated ADP systems. Of this total, operating and systems personnel for the on-going Equipment Replacement Program (ERP), a program which modernizes the hardware of our tax processing system, will require 78 staff years.

Major initiatives being undertaken with fiscal year 1983 staffing increases, which have both productivity enhancing and revenue producing benefits are in the area of tax enforcement operations. Increases for the Automated Collection System (ACS) and Automated Examination System (AES) will be used to develop and test automated systems to update our current, labor-intensive enforcement procedures. Expected savings in Office Collection staffing can be applied toward the reduction of high inventories of unworked taxpayer delinquency cases. The Automated Examination System will save technical and clerical staff time which will be reapplied to increase the number of examinations and improve the timeliness of assessments and consequently improve cash flow to the Treasury.

A number of other labor-intensive, out-dated systems and processes will be replaced by new capabilities which will increase productivity, reduce systems failures, and meet growth in workload which now threatens to erode our ability to sustain existing production levels. Projects include replacement of the obsolescent direct data entry system, developing an optical scanning capability for Federal Tax Deposit (FTD) documents, replacement of obsolete integrated data retrieval (IDRS) terminals, and a number of other productivity proposals. These projects will produce savings in transcription labor, energy and maintenance costs, and/or produce operational efficiencies in a variety of production processes.

Although there will be staff year savings from nearly all of the aforementioned initiatives, it is not feasible to specify the exact staff year savings by year for each project. In the case of the Microfilm Replacement System phase of ERP, however, initial savings of 114 staff years were deleted from the fiscal year 1983 budget request since the system is near implementation and hard estimates were available. Most of the other major savings will be generated by the enforcement systems, which are not to be operational until fiscal years 1984–85. Until the contract awards are made, and operational tests are completed, we cannot compute precise estimates of budget savings.

In addition to the direct systemic savings, increased revenue production gained by implementing these systems should be substantial. The fiscal year 1983 staff year increase is a rather small price to pay for the appreciable benefits to be derived over the next 20 years.

Overall, the benefits from this staffing investment should be measured not just in terms of the direct staff years saved, but also in terms of increased and accelerated revenue production, improved relations with taxpayers through more timely, accurate tax processing and account research capability, and the development of the IRS into a more effective, up-to-date enterprise, which can meet the challenges of a rapidly growing and changing tax environment in the 1980's.

EXAM RATES AND ACCOUNTS RECEIVABLE

Senator DECONCINI. Proceed.

Mr. EGGER. Another item that I think is important to at least be aware of is the fact that our audit coverage on returns has dropped materially over the last several years. Our accounts receivable, that is, the past-due accounts, have grown rapidly so that at the end of the last fiscal year, we had more than $20 billion in outstanding accounts receivable.

The new budget, we believe, is a giant step forward in terms of permitting us to cope with growth in the workload. For example, in the fiscal year 1983 budget, we have asked for some 5,000 new positions, 3,000 of which will go into the collection area to assist us in reducing significantly the outstanding accounts receivable. About a thousand of them will go into what we call our nonfiler program, to identify and to contact taxpayers who have, for one reason or another, not filed returns which are required. And then another thousand or so will go into the examination area, where we hope to increase audit coverage with particular reference to business tax returns and individual returns in the upper-income levels, that is, above $50,000, the more complex returns.

So here again, these are areas where we think these new directions can be extremely helpful to us.

Senator DECONCINI. Excuse me, Mr. Egger. How do you arrive at the $20 billion figure? Is that an estimate?

Mr. EGGER. No. That's a compiled figure. Let me give you this now because we have it with us. The breakdown is something like this: we have about $9 billion of the $20 billion in notice stage, that is to say, notices are outstanding, but the payment has not been received; another $4.5 billion or so in what we call active accounts receivable; and then there is around $6.5 billion in inactive accounts which will be collected in large part over time. It's that kind of a breakdown.

Senator DECONCINI. Thank you.

TAXPAYER SERVICE

Mr. EGGER. Then finally, I would like to talk a bit about Taxpayer Service, and elaborate a bit more on the steps we take to safeguard taxpayers' rights.

In the Taxpayer Service area, out fiscal year 1983 budget, in keeping with President Reagan's attempt to hold down the cost of Government and the number of people in Government where we can do our work without it, was trimmed after the Treasury and the Office of Management and Budget concluded that we should reduce that area of our budget. We took a hard look at the money that was being spent, and concluded that the only logical place to reduce was the toll-free, long-distance telephone inquiries that were not inquiries with respect to taxpayer account problems, such as notices they've received or followup on refunds, things of that kind. And here, we hope to substitute other programs, such as the expansion of our self-help program, that is to say, doing it in different format. Instead of holding all of these sessions in our district offices, we'd like to get them out into the neighborhoods and the communities. We're also expanding our public television presentations and expanding a new program which we call Teletax, which is basically a recorded message on any item in a long list of technical issues. People can call in from their touch-tone telephones and get information on any one of a long list of subjects.

We believe that the variety of information programs which we're going to both continue and expand should be adequate to provide access by taxpayers to the information they need in the preparation of their returns.

Let me just turn now briefly——

TOLL-FREE TELEPHONE SERVICE

Senator DECONCINI. Mr. Egger, let me go back briefly. We discussed this down in Tucson to some extent. I just want to ask one question I didn't get answered down there. If I did, it didn't satisfy me. The information I have is that 27 million people last year—calls were made last year by taxpayers on tax law questions. And 38 percent of the taxpayers who contacted IRS by phone have adjusted gross incomes below $15,000 a year. That's on a nationwide scale.

I just wonder if ample thought was given to these statistics, or if you knew about this information. I suspect you did know that the reduction in this information service was going to obviously have some stubatantial impact on the average or middle-income people who are not going to be able to ask these tax questions. I know we said in Tucson that many of the questions are professional people or services, and it's hard to break down. But of 27 million calls, you wonder how many could be made by accountants or lawyers.

Mr. EGGER. We just don't have that breakdown. I have with me a breakdown of the calls in fiscal year 1982 by category of subject.

Senator DECONCINI. Will you supply that for the record?

Mr. EGGER. Yes. It shows that the largest percentage of those calls involved questions of "When do I have to file? "Where do I have to file?" and "How do I go about getting, you know, an address to file it with?" and that kind of thing. All of the others, including substantive law questions, are also listed.

Our view of it is that given a cessation or termination of this service without substituting other ways for taxpayers to have access to the information, surely would bring about at least some of the result you suggested. And I felt that way myself about it.

[The information follows:]

Exhibit 1d. Part 1

QUALITY REVIEW OCCURRENCE SAMPLING
SURVEY AND ACCURACY RATES
NATIONAL - TELEPHONES - 1982 FILING PERIOD

RANK	QRE CODE	QRE DESCRIPTION	# QRE's SAMPLED	% OF TOTAL	ACCURACY RATE
1	30	FORMS/PUBLICATIONS REQUESTS	9452	12.6	99.92
2	74	REFUNDS (FORM 3911)	5791	7.7	99.71
3	6	FILING OF RETURNS	2376	3.2	99.24
4	78	SERVICE CENTER NOTICES	2297	3.1	99.43
5	115	INTEREST (SCH B)	2129	2.8	98.54
6	32	OFFICE LOCATION/HOURS	2116	2.8	99.76
7	713	NON-RECEIPT OF W-2	1744	2.3	99.25
8	14	ESTIMATED TAXES	1551	2.1	98.71
9	4	FILING REQUIREMENTS - WHO MUST FILE	1444	1.9	98.48
10	38	NON-IRS CALL	1398	1.9	99.71
11	10	DEPENDENTS (FORM 2120)	1284	1.7	96.57
12	66	DEPRECIATE, AMORTIZE, DEPLETE (FORM 4562)	1257	1.7	95.86
13	420	INCOME AVERAGING, SCHEDULE G	1240	1.7	97.18
14	712	PREPARATION OF W FORMS	1202	1.6	98.09
15	56	AMENDED RETURNS AND CLAIMS (FORM 1040X)	1202	1.6	98.42
16	37	OTHER IRS CALL	1169	1.6	99.79
17	70	ACCOUNT INFORMATION	1151	1.5	99.48
18	330	TAX (ITEMIZED DEDUCTION)	1048	1.4	97.90
19	125	CAPITAL GAIN/LOSS (SCHED D, FORM 4797)	1004	1.3	96.91
20	230	EMPLOYEE BUSINESS EXPENSE, FORM 2106	1000	1.3	96.70
21	8	FILING STATUS	963	1.3	96.99
22	861	INDIV RETIREMENT SAVINGS ARRANGEMENT	956	1.3	97.70
23	410	TABLES AND SCHEDULES	949	1.3	98.31
24	715	FEDERAL TAX DEPOSIT FORMS 501, etc.	928	1.2	98.06
25	730	FED INC & SOC SEC W/H FRM 941, 942, 943	925	1.2	97.62
26	50	REQUEST FOR PHOTOCOPY OF RETURN	922	1.2	99.24
27	72	PENALTIES/INTEREST (FORM 2210)	901	1.2	95.67
28	42	COLLECTION PROCEDURES/INFORMATION	855	1.1	99.42
29	120	SOLE PROPRIETORSHIP, SCHEDULE C	823	1.1	97.45
30	365	MISCELLANEOUS DEDUCTIONS	789	1.1	97.47
31	40	OTHER IRS PROCEDURE/INFORMATION	731	1.0	99.59
32	128	SALE/EXCHG PERSONAL RESIDENCE (FORM 2119)	730	1.0	97.26

97-646 O - 83 - 9

RANK	QRE CODE	QRE DESCRIPTION	# QRE's SAMPLED	% OF TOTAL	ACCURACY RATE
33	190	NON-TAXABLE INCOME	692	.9	98.84
34	100	INCOME	689	.9	97.10
35	685	RESIDENTIAL ENERGY CREDIT	681	.9	96.88
36	320	MEDICAL AND DENTAL	675	.9	96.44
37	714	WITHHOLDING/FICA TABLES	664	.9	98.04
38	530	SELF-EMPLOYMENT TAX (SCHEDULE SE)	634	.8	95.58
39	630	EARNED INCOME CREDIT	612	.8	98.53
40	150	PENSION AND ANNUITY INCOME SCHEDULE E	587	.8	98.30
41	7	EXTENSIONS (FORMS 2688, 4868)	556	.7	97.84
42	110	DIVIDENDS, SCHEDULE B	535	.7	97.57
43	370	UNALLOWABLE DEDUCTION	526	.7	98.86
44	9	EXEMPTIONS	525	.7	98.29
45	345	CASUALTY OR THEFT LOSSES, FORM 4684	512	.7	96.48
46	160	RENT/ROYALTY INCOME - SCHD E/4831	504	.7	98.02
47	52	REQUEST FOR TAXPAYER ID NO (SS-4/5)	500	.7	98.80
48	1	FORM 1040/1040A	476	.6	97.27
49	760	INFO STMTS RECIPIENTS FRM 1087,1099	464	.6	98.28
50	250	INDIVIDUAL RETIREMENT ACCOUNTS	454	.6	97.14
51	340	CONTRIBUTIONS	447	.6	98.88
52	720	FORM 940	441	.6	98.87
53	400	INCOME TAX COMPUTATION	441	.6	97.51
54	615	CHILD CARE CREDIT (FORM 2441)	421	.6	97.39
55	79	PAYMENT	406	.5	99.26
56	305	ITEMIZED DEDUCTIONS VS ZBA	394	.5	97.72
57	106	UNEMPLOYMENT COMPENSATION	393	.5	97.96
58	220	MOVING EXPENSE FORM 3903	391	.5	97.19
59	335	INTEREST EXPENSE	384	.5	96.61
60	620	INVESTMENT CREDIT (FORM 3468)	375	.5	95.20
61	280	DISABILITY INCOME EXCLUSION	350	.5	96.57
62	140	INSTALLMENT SALES	340	.5	97.94
63	600	CREDITS AND PAYMENTS	300	.4	98.67
64	155	LUMP-SUM DISTRIBUTIONS	299	.4	96.99
65	315	SCHEDULE A (GENERAL)	278	.4	97.84
66	0	GENERAL	276	.4	98.55
67	3	ALIEN FORMS 1040C/1040NR	262	.3	97.71
68	610	CREDIT FOR ELDERLY (SCHEDULE R)	260	.3	97.31

RANK	QRE CODE	QRE DESCRIPTION	# QRE's SAMPLED	% OF TOTAL	ACCURACY RATE
69	64	BASIS OF ASSETS	259	.3	96.53
70	870	EXEMPT ORGANIZATIONS	242	.3	99.17
71	90	TELEPHONE ASSISTANCE OBSERVABLE REF	241	.3	98.76
72	46	TAXPAYER EDUCATION	236	.3	99.58
73	710	CIRCULAR E	214	.3	96.26
74	105	WAGES, SALARIES, TIPS	209	.3	96.65
75	130	SUPL SCHD OF GAINS AND LOSSES FORM	185	.2	92.97
76	850	GIFT TAX-GENERAL (FORM 709)	182	.2	97.80
77	920	WINDFALL PROFITS TAX EXCISE TAX ON	179	.2	96.65
78	820	CORPORATIONS	179	.2	98.88
79	810	PARTNERSHIPS	170	.2	98.24
80	39	REQUEST FOR CALLBACK	166	.2	100.00
81	43	PROBLEM RESOLUTION OFFICE	158	.2	100.00
82	200	ADJUSTMENTS	147	.2	97.28
83	180	SCHEDULE FILLER	145	.2	97.93
84	310	ZERO BRACKET AMOUNT	140	.2	99.29
85	68	BAD DEBTS	140	.2	92.86
86	862	KEOUGH PLANS	139	.2	98.56
87	700	EMPLOYMENT	135	.2	99.26
88	300	DEDUCTIONS AND EXEMPTIONS	134	.2	97.01
89	62	RECORDKEEPING REQUIREMENTS	134	.2	97.76
90	830	FIDUCIARIES	133	.2	100.00
91	210	SICKPAY, FORM 2240	127	.2	98.43
92	711	EMPLOYER-EMPLOYEE RELATIONSHIP	125	.2	97.60
93	840	ESTATES - GENERAL (FORM 706)	121	.2	96.69
94	900	EXCISE TAXES	102	.1	97.06
95	101	OWNERSHIP OF INCOME PRODUCING ASSET	102	.1	94.12
96	175	NET OPERATING LOSS	101	.1	95.05
97	22	DECEDENT (FORM 1310)	99	.1	98.99
98	500	OTHER TAXES	87	.1	96.55
99	195	INCOME EARNED ABROAD	87	.1	100.00
100	860	EMPLOYEE PLANS	78	.1	97.44
101	185	SCHOLARSHIPS FELLOWSHIPS GRANTS	73	-	98.63
102	44	YBTK REQUESTS	71	-	100.00
103	36	PRACTICNER/PREPARER INQUIRIES	69	-	100.00
104	196	ALIMONY INCOME	68	-	97.06

RANK	QRE CODE	QRE DESCRIPTION	# QRE's SAMPLED	% OF TOTAL	ACCURACY RATE
105	430	TAX COMPUTATION SCHEDULE (SCHD TC)	66	-	98.48
106	851	FILING REQUIREMENTS	57	-	100.00
107	60	METHOD OF ACCOUNTING (FORM 3115)	55	-	100.00
108	54	PROPOSED LEGISLATION	54	-	100.00
109	863	OTHER EMPLOYEE PLANS	47	-	100.00
110	76	ACCOUNT ADJUSTMENT	42	-	100.00
111	165	INCM/LOSS FROM PART. ETC./SCHD E	41	-	92.68
112	873	EXEMPTION FROM FICA WITHHOLDING	34	-	94.12
113	821	FILING REQUIREMENT FORM 2758 7004	33	-	96.97
114	686	BUSINESS ENERGY CREDIT	32	-	96.88
115	811	FILING REQUIREMENT-FORM 2758/SCH K	31	-	100.00
116	240	KEOUGH PLAN	28	-	96.43
117	841	FILING REQUIREMENTS (FORM 706)	25	-	92.00
118	77	INFORMATION RETURN PROGRAM (IRP)	25	-	100.00
119	831	FILING REQUIREMENTS	21	-	90.48
120	815	FORM COMPLETION (FORM 1065)	20	-	100.00
121	80	WRITTEN REQUEST FOR TECH. ADVICE	18	-	100.00
122	827	PAYMENTS AND CREDITS	12	-	100.00
123	800	OTHER BUSINESS RETURNS	12	-	91.67
124	825	FORM COMPLETION (1120)	11	-	100.00
125	49	FREEDOM OF INFORMATION/PRIVACY ACT	7	-	100.00
		TOTAL	74919.		

Exhibit 1d. Part 2

QUALITY REVIEW OCCURRENCE SAMPLING
SURVEY AND ACCURACY RATES
NATIONAL - REFERRALS - 1982 FILING PERIOD

RANK	QRE CODE	QRE DESCRIPTION	# QRE's SAMPLED	% OF TOTAL	ACCURACY RATE
1	74	REFUNDS (FORM 3911)	10596	16.0	99.33
2	70	ACCOUNT INFORMATION	8814	13.3	98.92
3	66	DEP., AMOR., DEPL. (FRM 4562)	2674	4.0	98.06
4	861	INDIV RETIREMENT SAVINGS ARRANGEMENT	2401	3.6	98.04
5	125	CAPITAL GAIN/LOSS SCHED D	1786	2.7	98.88
6	78	SERVICE CENTER NOTICES	1556	2.3	99.94
7	30	FORMS/PUBLICATIONS REQUESTS	1407	2.1	100.00
8	115	INTEREST (SCH B)	1116	1.7	98.03

RANK	QRE CODE	QRE DESCRIPTION	# QRE's SAMPLED	% OF TOTAL	ACCURACY RATE	
9	72	PENALTIES/INTEREST (FORM 2210)		1103	1.7	98.10
10	620	INVESTMENT CREDIT (FORM 3468)		1031	1.6	98.45
11	160	RENT/ROYALTY INCOME (SCHD E/4831)		975	1.5	98.97
12	140	INSTALLMENT SALES		919	1.4	99.13
13	120	SOLE PROPRIETORSHIP, SCHEDULE C		832	1.3	98.20
14	150	PENSION AND ANNUITY INCOME		830	1.3	99.04
15	128	SALE/EXCH PERSONAL RESIDENCE		827	1.2	99.03
16	64	BASIS OF ASSETS		801	1.2	99.00
17	820	CORPORATIONS		765	1.2	99.35
18	230	EMPLOYEE BUSINESS EXPENSE, FORM 2106		737	1.1	97.56
19	870	EXEMPT ORGANIZATIONS		734	1.1	99.73
20	130	SUPL SCHD OF GAINS AND LOSSES FORM		730	1.1	97.46
21	920	WINDFALL PROFITS TAX EXCISE TAX ON		717	1.1	98.33
22	730	FEC INC & SOC SEC W/H FRM 941, 942, 943		707	1.1	99.01
23	76	ACCOUNT ADJUSTMENT		701	1.1	99.29
24	100	INCOME		700	1.1	99.00
25	365	MISCELLANEOUS DEDUCTIONS	649	1.0	98.77	
26	56	AMENDED RETURNS AND CLAIMS	649	1.0	98.30	
27	600	CREDITS AND PAYMENTS	611	.9	99.18	
28	810	PARTNERSHIPS	579	.9	98.80	
29	190	NON-TAXABLE INCOME	550	.8	99.64	
30	155	LUMP-SUM DISTRIBUTIONS	549	.8	98.36	
31	420	INCOME AVERAGING, SCHEDUELE G	535	.8	98.13	
32	250	INDIVIDUAL RETIREMENT ACCOUNTS	514	.8	98.25	
33	830	FIDUCIARIES	509	.8	99.21	
34	862	KEOUGH PLANS	501	.8	98.80	
35	712	PREPARATION OF W FORMS	492	.7	98.58	
36	52	REQUEST FOR TAXPAYER ID NO (SS-4/5)	487	.7	99.18	
37	14	ESTIMATED TAXES	440	.7	99.77	
38	175	NET OPERATING LOSS	439	.7	98.41	
39	345	CASUALTY OR THEFT LOSSES, FORM 4684	430	.6	97.91	
40	370	UNALLOWABLE DEDUCTION	428	.6	99.77	
41	530	SELF-EMPLOYMENT TAX (SCHEDULE SE)	419	.6	98.33	
42	335	INTEREST EXPENSE	419	.6	98.57	
43	110	DIVIDENDS, SCHEDULE B	412	.6	98.30	
44	340	CONTRIBUTIONS	408	.6	98.04	

RANK	QRE CODE	QRE DESCRIPTION	# QRE's SAMPLED	% OF TOTAL	ACCURACY RATE
45	760	INFO STMTS RECIPIENTS FRM 1087, 1099	398	.6	99.00
46	400	INCOME TAX COMPUTATION	394	.6	98.73
47	3	ALIEN FORMS 1040C/1040NR	391	.6	98.21
48	850	GIFT TAX-GENERAL (FORM 709)	388	.6	99.48
49	840	ESTATES - GENERAL (FORM 706)	374	.6	99.73
50	180	SCHEDULE FILLER	338	.5	98.82
51	68	BAD DEBTS	315	.5	96.83
52	900	EXCISE TAXES	308	.5	99.68
53	330	TAX (ITEM. DED)	305	.5	98.36
54	280	DISABILITY INCOME EXCLUSION	305	.5	99.02
55	685	RESIDENTIAL ENERGY CREDIT	304	.5	98.36
56	715	FEDERAL TAX DEPOSIT.FORMS 501 ETC.	300	.5	98.33
57	320	MEDICAL AND DENTAL	298	.4	98.99
58	195	INCOME EARNED ABROAD	294	.4	98.64
59	6	FILING OF RETURNS	286	.4	98.95
60	720	FORM 940	282	.4	98.58
61	500	OTHER TAXES	278	.4	97.48
62	860	EMPLOYEE PLANS	276	.4	99.64
63	220	MOVING EXPENSE FORM 3903	273	.4	98.90
64	43	PROBLEM RESOLUTION OFFICE	262	.4	100.00
65	40	OTHER IRS PROCEDURE/INFORMATION	257	.4	99.22
66	10	DEPENDENTS (FORM 2120)	230	.3	97.39
67	8	FILING STATUS	211	.3	98.58
68	38	NON-IRS CALL	192	.3	100.00
69	0	GENERAL	179	.3	98.32
70	101	OWNERSHIP OF INCOME PRODUCING ASSET	177	.3	97.74
71	863	OTHER EMPLOYEE PLANS	175	.3	100.00
72	4	FILING REQUIREMENTS - WHO MUST FILE	170	.3	98.24
73	821	FILING REQUIREMENT FORM 2758 7004	169	.3	99.41
74	185	SCHOLOARSHIPS, FELLOWSHIPS, GRANTS	166	.3	97.59
75	105	WAGES, SALARIES, TIPS	164	.2	100.00
76	714	WITHHOLDING/FICA TABLES	161	.2	98.76
77	80	WRITTEN REQUEST FOR TECH. ADVICE	157	.2	98.09
78	79	PAYMENT	153	.2	100.00
79	851	FILING REQUIREMENTS	150	.2	99.67
80	841	FILING REQUIREMENTS (FORM 706)	150	.2	100.00

RANK	QRE CODE	QRE DESCRIPTION	# QRE's SAMPLED	% OF TOTAL	ACCURACY RATE
81	811	FILING REQUIREMENTS FORM 2758/SCH K	150	.2	100.00
82	711	EMPLOYER-EMPLOYEE RELATIONSHIP	142	.2	100.00
83	42	COLLECTION PROCEDURES/INFORMATION	141	.2	99.29
84	200	ADJUSTMENTS	140	.2	98.57
85	615	CHILD CARE CREDIT (FORM 2441)	134	.2	98.51
86	32	OFFICE LOCATIONS-HOURS	134	.2	100.00
87	713	NON-RECEIPT OF W-2	133	.2	100.00
88	700	EMPLOYMENT	129	.2	99.22
89	873	EXEMPTION FROM FICA WITHHOLDING	119	.2	99.16
90	410	TABLES AND SCHEDULES	114	.2	98.25
91	630	EARNED INCOME CREDIT	112	.2	95.50
92	831	FILING REQUIREMENTS	106	.2	94.34
93	165	INCM/LOSS FROM PART. ETC./SCHD E.	104	.2	100.00
94	60	METHOD OF ACCOUNTING (FORM 3115)	103	.2	99.03
95	300	DEDUCTIONS AND EXEMPTIONS	99	.1	98.99
96	815	FORM COMPLETION (FORM 1065)	95	.1	100.00
97	710	CIRCULAR E	94	.1	100.00
98	210	SICKPAY, FORM 2440	93	.1	100.00
99	50	REQUEST FOR PHOTOCOPY OF RETURN	91	.1	100.00
100	37	OTHER IRS CALL	85	.1	98.82
101	1	FORM 1040/1040A	81	.1	100.00
102	686	BUSINESS ENERGY CREDIT	76	.1	100.00
103	7	EXTENSIONS (FORMS 2688,4868)	76	.1	100.00
104	196	ALIMONY INCOME	75	.1	100.00
105	90	TELEPHONE ASSISTANCE OBSERVABLE REF	75	.1	97.33
106	315	SCHEDULE A (GENERAL)	73	.1	100.00
107	240	KEOGH PLAN	73	.1	97.26
108	62	RECORDKEEPING REQUIREMENTS	71	.1	100.00
109	825	FORM COMPLETION (1120)	70	.1	100.00
110	305	ITEMIZED DEDUCTIONS VS ZBA	70	.1	98.57
111	22	DECEDENT (FORM 1310)	69	.1	100.00
112	106	UNEMPLOYMENT COMPENSATION	66	-	96.97
113	46	TAXPAYER EDUCATION	65	-	100.00
114	9	EXEMPTIONS	58	-	98.28
115	77	INFORMATION RETURN PROGRAM (IRP)	56	-	100.00
116	610	CREDIT FOR ELDERLY (SCHEDULES R)	53	-	96.23

RANK	QRE CODE	QRE DESCRIPTION	# QRE's SAMPLED	% OF TOTAL	ACCURACY RATE
117	54	PROPOSED LEGISLATION	48	-	100.00
118	36	PRACTIONER/PREPARER INQUIRIES	43	-	100.00
119	827	PAYMENTS AND CREDITS	41	-	97.56
120	430	TAX COMPUTATION SCHEDULE (SCHD TC)	23	-	95.65
121	800	OTHER BUSINESS RETURNS	22	-	95.45
122	49	FREEDOM OF INFORMATION/PRIVACY ACT	21	-	100.00
123	39	REQUEST FOR CALLBACK	20	-	100.00
124	44	YBTK REQUESTS	5	-	100.00
125	310	ZERO BRAKCET AMOUNT	2	-	100.00
			TOTAL 66359.		

DELIVERY SYSTEMS

Mr. EGGER. But as a matter of necessity, after having reviewed this whole budget area, we concluded that perhaps there were more efficient and more effective ways of supplying the kind of service that taxpayers need, and we're going to work as assiduously as possible between now and the filing season to try to address that. In other words, we're looking at it now from the standpoint of putting ourselves in the taxpayers' shoes and attempting to see what kind of help will be most useful, and then attempt to supply it in that fashion.

Senator DECONCINI. But seriously, the motivation for all of this is to cut back on expenses; is that right?

Mr. EGGER. Yes.

Senator DECONCINI. There's no conclusion that this program does not work well. It's just that you're trying to find some place to save money; is that right?

Mr. EGGER. That's correct. But the toll-free telephone service by itself is a very expensive service. It's a $50 million program. And what we need to find out is whether the taxpayers across the country, as a whole, are getting the most for their money in that program versus some other program.

SAFEGUARDING TAXPAYERS' RIGHTS

And the other point I want to make is about the safeguarding of taxpayers' rights. Almost all of the difficulties that arise in our dealings with taxpayers, both individually and in groups, grow from the question of whether or not we have built into the system adequate safeguards. In other words, safeguards against people being levied too quickly on a bank account, or taking some other property without adequate notice, and so on and so forth. And I want to say that it is not in our interest as administrators of the tax system to be other than as completely straightforward as we can possibly be. It would be, in effect, a negative consequence to

the system as such, if we ignored or purposely overran taxpayers' rights.

So there's no motivation for us to be doing that. The problems stem from volume. They stem from a very, very large number of people that have to make judgments and make decisions. We've got 85,000 plus people scattered in some 900 locations around the country in the administration of the tax system. Of those, something around 50,000 are involved one way or another in enforcement activities. And it's simply logical and appropriate to assume that since these people are making judgmental decisions at varying levels, that from time to time, either poor judgment or lack of knowledge or possibly even misunderstandings on their part will create errors.

ERRORS: SYSTEM AND JUDGMENT

The ones that we are concerned about are the ones that are errors of the system and the ones that are errors of judgment. We hope to minimize those by training, and then we can identify them to see to it that the same kind of thing doesn't happen again.

Senator DECONCINI. Would you say that you're succeeding in minimizing or reducing those kinds of complaints? I certainly don't get that impression in my offices. I get just the opposite.

Mr. EGGER. Well, I'll put it this way: The nature of the complaints that I receive—and I do review them on a monthly basis—and the nature of the things that are happening and that are being complained about are much less egregious, shall I say, than they were in the past. We haven't had any Volkswagen incidents since 1977. Witness the fact that when people want to talk about it, they seem to be able to only dredge up the things that happened 2 or 3 years ago, instead of something that happened yesterday. So we have to assume that we are making some strides in that direction.

We have imposed, and we do everything we can to enforce, stringent safeguards in every area of enforcement examination, collections, criminal investigations.

NOTICES

Collection, for example, sends out four notices, 4 to 5 weeks apart, to people that owe taxes and haven't paid. And those notices are worded in such a fashion and are accompanied by information which, if the taxpayers were to pay attention to it, if they were to read the material that we give them, they would understand exactly what we're doing. The difficulty we find is that so many times, taxpayers ignore the correspondence that they get, and I don't know how to change that. I don't know how to get people to read their mail, I guess. But we make every effort.

In fact, last year I had all of those notices reviewed again from the standpoint of wording to see to it that they were as clear as they could possibly be. We are going to do that on an ongoing basis to make sure there's a minimum of opportunity for misunderstanding.

Senator DECONCINI. But, of course, when you listen to the testimony we had day before yesterday and when you admit to yourself the problems with your computer, I can see why people don't want

to answer your mail when they've already answered it and then they get another notice. Even if there's another notice there that brings something else to their attention, they say, "My gosh, this Government doesn't know what they're doing."

Mr. EGGER. I appreciate that point. And I said earlier that we've addressed that. We understand it as a problem. We are addressing it, and we're going to do everything we can to cure it. But I would like to supply for the record, if we can—if we do have the information—I would like to at least have your records show how many millions of those things we sent out each year.

Senator DECONCINI. Yes; I think that's fine.

Mr. EGGER. We recognize that there are millions and millions and millions of them that are properly handled and very efficiently handled, so that I don't want there to be a misunderstanding that every notice we send out doesn't get proper attention, because it just isn't the case.

Senator DECONCINI. Yes; I understand.

[The information follows:]

CALENDAR YEAR 1981 TAXPAYER NOTICES FROM MASTER FILES

[In millions]

Type of notice	IMF [1]	BMF [2]	Total
Taxpayer delinquent account (TDA)	15.4	9.0	24.4
Taxpayer delinquent investigation (TDI)	5.1	8.9	14.0
Other:			
Overpayment	9.3	1.8	11.1
Even balance	2.3	0.7	3.0
Taxpayer inquiry	6.1	1.5	7.6
Undelivered refund	.3	([3])	.3
Total, other	18.0	4.0	22.0
Total, all notices	38.5	21.9	60.4

[1] Individual master file.
[2] Business master file.
[3] Fewer than 50,000 BMF undelivered refunds.

Note.—"Notices" should not be confused with taxpayer "contacts" or Service "communications" with the public.

PROBLEM RESOLUTION PROGRAM

Mr. EGGER. Finally, I would like to talk about our Problem Resolution program. In every district in the United States—and that's 59 of them—we have a problem resolution officer, and that work is coordinated by the taxpayer ombudsman who is directly in my office and reports directly to me. These people have ample authority to cut across functional lines to deal directly with problems where something in the system has gone awry. For example, if a taxpayer got a notice and wrote back and then got the second notice ignoring the first one, I would hope that they would pick up the phone and call the problem resolution officer in the district and say, "All right, this is what's happened. What do I do? You tell me what I do now, or will you please look into it?" because that's their job. There, something has gone wrong in the system. This program is about 3 years old now. As I said earlier in these hearings, something over 350,000 cases were handled by the Problem Resolution program last year. And the comments that we get back from

taxpayers indicate that there's a very, very high percentage, something in the 90-percent range, who find that the program was extremely helpful. We've had many, many compliments on that particular program.

And I just feel that a lot of times, taxpayers do not know that that service is there. We're going to do everything that we can to publicize it so that they can take advantage of it and be aware of it.

So with that, Senator DeConcini, I'd like to simply say that we have a lot of other problems, including the tax protesters, including the tax gap, which is now—if we combined the legal and illegal sectors—about $95 billion a year, and it is a problem that we and Congress are dealing with directly. Legislation has been introduced by leaders from both political parties and from both Houses of Congress, and I believe this problem is being addressed as rapidly and as directly as it can be. I congratulate you and the other members of the subcommittee for giving it attention in terms of the budget resources it is starting to take, or deal at least in major part with those problems.

Senator DECONCINI. Thank you.

Mr. EGGER. With that, Mr. Berry probably would like to make a few brief comments, and then we'll be available for whatever questions you have.

STATEMENT OF PRESCOTT BERRY

STAFF AND WORKLOAD

Senator DECONCINI. Mr. Berry.

Mr. BERRY. Thank you, Senator. I, too, appreciate the invitation to appear here today as part of your review of IRS activities in the State of Arizona. My comments will address three principal areas: The impact of the proposed fiscal year 1983 budget on tax administration in the Phoenix district, closing the tax gap and collecting delinquent tax liabilities, and safeguarding taxpayers' rights.

In the interest of some perspective, I think it's well to explain that this district is responsible for 1½ million tax returns, and it is true that we do receive complaints. It is equally true that we try to be responsive and to correct any problems. We understand it's very difficult to satisfy everyone. However, to carry out our program, we do have 500 employees in the Phoenix district, and we have 5 divisions, as we explained in Tucson: Taxpayer Service Division, Examination Division, Collection Division, the Criminal Investigation Division, and Resource Management Division.

TAXPAYER SERVICE

A point on the Taxpayer Service Division, if I may. This fiscal year, we anticipate we will respond to over 600,000 telephone inquiries and respond to in excess of 54,000 individuals who visit our offices. Those are a lot of taxpayers. To provide the best possible service with the staff we have, we have attempted to do a number of things such as providing training to volunteers from such community groups as the American Society of Women Accountants, State university and college students, and Chicanos Por La Casa.

These volunteers, through our VITA program—volunteer income tax assistance—prepared over 5,000 Federal income tax returns, nearly 5,000 State tax returns, and answered approximately 2,500 related tax questions.

In addition, tax counseling for the elderly, which is an area of concern of ours, sponsored by the American Association of Retired Persons, estimated they prepared well over 6,000 Federal tax returns. We have attempted, through these kinds of community efforts, to provide service in the neighborhoods and communities where the taxpayers are located, and to further provide help to those who are in the most need of assistance.

EXAMINATION DIVISION

During the testimony in Tucson the other day, a number of comments stemmed from our examination activities. Our program includes examining 20,000 returns of the approximate 1½ million returns filed here that I mentioned earlier. This means that our coverage, our ratio of returns examined to returns filed, is approximately 1.34 percent. Although we spend a major portion of our resources on what we would call traditional tax enforcement activities, I think it is important to again state that a substantial portion of these resources are now being directed toward abusive tax shelters and illegal tax protesters.

TAX SHELTER EFFORTS

The Phoenix District presently has an inventory of more than 8,500 returns in the abusive tax shelter program. This inventory is the third highest in the Western Region, behind Los Angeles and San Francisco, and represents 59 percent of the district total field examination inventory of income tax returns. We have closed in excess of 2,200 of these abusive shelters, with recommended deficiencies in excess of $14 million since October of 1981.

Promoters of all types are involved in abusive tax shelters, including attorneys, CPA's and other practitioners. This problem has become so acute that the American Bar Association felt it necessary to issue Formal Opinion 346 of the American Bar Association's Standard Committee on Ethics and Professional Responsibility, which provides strict guidance to that profession concerning tax law opinions on tax shelters. In addition, we are reviewing circular 230 with a view toward strengthening our rules relating to tax practitioners regarding abusive tax shelters.

TAX PROTESTER ACTIVITIES

There are approximately 7,000 questionable W-4's that are presently being processed and determinations made with regard to their validity. In my opinion, we are required to spend an inordinate amount of time dealing with individuals who would attempt to flagrantly avoid paying their rightful tax through such schemes as refusing to include tax return information on the form 1040 because of a claim of constitutional rights. It's a very sizable problem. Examples include reducing the gross income on the return because of the declining value of the dollar; filing a return with a state-

ment that only gold or silver currency can be taxed; filing a blank form 1040 with only the taxpayer's name and address and possibly signature; nonpayment or underpayment of taxes because of a protest return; vows of poverty where the taxpayer receives income from nonreligious sources and declares that it is nontaxable because of a vow of poverty; protest type adjustments where the return filed contains specific, unallowable items identified as protest items; and the use of the W-4 as I have mentioned earlier.

COLLECTION DIVISION

We also have a substantial increase in our delinquent account area in the Collection Division. At the present time, we have approximately 20,000 delinquent accounts, and 10,000 delinquency investigations involving returns that have not been filed. This represents over $51 million in assessed, but not-yet-collected taxes. These inventory balances represent increases of 20 percent over the prior year in delinquent accounts, and a 6-percent increase in delinquency investigations. The total of accounts determined to be uncollectable in Arizona as of September 1981, was $41 million.

One of the tools we use is a seizure. In fiscal year 1981, district seizures involving delinquent business taxes represent 71 percent of all seizures made. Overall seizure activity increased by 26 percent, and sales or redemption of these seized assets—and note, I say assets—that were available for the taxpayer to make the payment resulted in a collection of in excess of $600,000.

CRIMINAL INVESTIGATIONS

The Criminal Investigation Division investigates such violations as conspiracy to evade income taxes, multiple refund case claims, failure to file and filing false returns. The activities of this division are numerous, and include participation in a financial claims task force formed by the U.S. attorney for Arizona. This task force, which includes the U.S. attorney's office, the Drug Enforcement Agency, the Federal Bureau of Investigation, the U.S. Customs Service, the Phoenix Police Department and the Arizona Department of Public Safety, is primarily directed toward narcotic trafficking and related tax violations.

It was formed in January 1981, and thus far has produced more than 60 Federal indictments. In 14 of these indictments, the individuals have been charged with criminal tax violations. The most recent indictment involved 53 persons who were charged with drug and tax violations concerning a nationwide drug distribution organization.

The Phoenix district conceived and initiated a project entitled Business Opportunities. This project was designed to deal with the "tax gap" problem associated with businesses with a high potential for skimming, which is not reporting all income for tax purposes. The term "tax gap" applies to all revenue lost to the Treasury through noncompliance with our tax laws.

We feel this project has been and will continue to be extremely successful. The Criminial Investigation Division is also involved in the illegal tax protest activity and identifying promoters of tax evasion schemes. Our efforts in this area are primarily devoted to

challenging the promoters who would attempt to reap profits from abusive tax shelters.

SAFEGUARDING TAXPAYERS' RIGHTS

We, too, feel that the concept of voluntary compliance in tax administration is essential. We understand and appreciate the necessity for protecting and safeguarding taxpayers' rights. The fact that personal judgment on the part of our employees is required in most taxpayer contacts, such as examination of returns, collection of delinquent accounts, and investigation of possible criminal violations, an ever-present prospect for error exists. We are committed to safeguarding the taxpayers' rights within the system, and we're constantly striving to improve these areas.

PROBLEM RESOLUTION

In this district, we also have a problem resolution officer, who is responsible for helping taxpayers resolve problems that are not handled through the normal processes of our organization. With the ability the problem resolution officer has to cut across functional lines and gather information from within the district and throughout the Service, these problems for the most part are resolved within the first 30 days that they are identified. In fiscal year 1981, our problem resolution officer responded to more than 2,000 inquiries.

Finally, as pointed out earlier, collecting taxes is perhaps the most unpopular function in Government, but I hope we would all agree, a function vital to our very existence. We are committed to carrying out this function as directed by Congress to the best of our ability.

I would like to thank you, Senator, and your local staff in particular, for their cooperation in assisting us to prepare for these hearings.

RIGHTS AND OBLIGATIONS OF TAXPAYERS

Senator DECONCINI. Thank you, Mr. Berry. I would like to ask one question to either you, Mr. Berry, or Mr. Egger. For the record, if you can, what is the obligation of the taxpayer each April 15 to fill out a 1040? Can you give us what rights that taxpayer has as you interpret them under the law? What must he do and what must he not do? Mr. Egger.

Mr. EGGER. I'm sorry. I thought you addressed the question to Mr. Berry.

Senator DECONCINI. Well, either one, whoever cares to respond.

TAXPAYER'S OBLIGATION TO FILE

Mr. EGGER. Well, the law is very specific in terms of who is required to file a return. Those individuals are required to file a tax return and to properly report their income, and to see to it that the tax that has not been paid through withholding or through quarterly estimated payments is then paid at that due date.

Senator DECONCINI. And then after that, what rights do the taxpayers have when they get a notice from you?

Mr. EGGER. When the taxpayer receives a notice from us—first of all, let's assume that it's a notice that he owes additional tax.

Senator DECONCINI. Right.

Mr. EGGER. It may be because of some item we've picked up at the service center, or perhaps just math verification, which we do on every return. He receives a notice from us saying that based on an error in your return, we have concluded that you owe thus and so additional taxes, and attached to that statement will be a recomputation of the tax.

There will be on that notice a telephone number, and if the taxpayer's unable to understand or doesn't understand what——

Senator DECONCINI. Excuse me. Must the taxpayer respond to that under the law?

Mr. EGGER. Yes; because it is in the form of an assessment, is what it amounts to, of course. And the taxpayer's required to either pay the tax, or to work out with us why that calculation is wrong.

BOOKS AND RECORDS

Senator DECONCINI. Now, if the taxpayer is being audited, if you're in a position of questioning the return, what rights do the taxpayers have? Must they open their books to you upon presentation of notice, or exactly what are their rights?

Mr. EGGER. Yes; they're required to keep books and records of their——

Senator DECONCINI. By law?

Mr. EGGER. Yes; of their income and expenditures, and those items which they claim as deductions. They are required to supply those books and records when requested to do so by us.

APPEAL PROCEDURES

If they do not agree with the findings of our examining officers, then they are entitled to an administrative appeal, which takes the case out of the hands of the Examination Division and into the hands of the Appeals Division, where the case or the issue is looked at in a totally separate and independent review. If that appeals officer concludes that the examination officer, that is the revenue agent, is correct—or in other works, holds against the taxpayer—then the taxpayer would receive what we call a statutory notice of deficiency: In common parlance, a 90-day letter.

ROLE OF U.S. TAX COURT

At that point, they can go to the Tax Court and file a petition within 90 days, and have that case heard by the Tax Court. The Tax Court has special procedures for what we call small cases, where the taxpayer can file a very informal petition and represent himself or herself in the Tax Court, and have that case heard independently without the necessity for incurring the cost of counsel. If they choose to do so, the procedures are available to the taxpayer for a very modest cost, and that's merely the cost of the petition in Tax Court. That case can be heard all the way through, including

an independent judiciary review. But it's the right of the taxpayer to have their issue heard and considered, in my opinion.

NOTICE OF DISALLOWANCE

Senator DECONCINI. If you give notice that you're disallowing certain items on a taxpayer's return and you're assessing them, if the taxpayer contests that, what does he do? Does he just write you and say, "I contest that. Here's the information to substantiate it," or does he ask for a hearing?

TAXPAYER OPTION

Mr. EGGER. First of all, before he's received a notice that we're going to disallow something on the return, the taxpayer would be invited to bring in such documentation or other support for the deduction.

Senator DECONCINI. He does not have to come in. He's invited in?

Mr. EGGER. He does not have to come in. He can ignore that totally, in which case he would receive a notice which he can then appeal. He is entitled to a hearing before the Appeals Division, and that hearing is one in which he can be again represented by an advisor or appear on his own behalf and have a 1-to-1 conference with the appeals officer.

In many, many cases, we have a whole series of such conferences, where the first conference brings out the need for additional material and so on and so forth. So again, there's no lack of opportunity for the taxpayer to be heard, by not merely the examining officer, but by an appeals officer who is totally independent of the Examination Division.

Senator DECONCINI. Now the case we've had in Tucson that you mentioned, the expenses for the railroad engineer, just out of curiosity, is there any validity to the fact that had Mr. Shusta kept a book of itemized expenses, that that would have been satisfactory for the Service without receipts?

Mr. EGGER. I really can't answer it. I haven't had an opportunity to look into the case. I do not know whether he was before the Appeals Division, or whether this was done strictly by the revenue agent.

RECORD OF EXPENSES

Senator DECONCINI. In general, if you were maintaining expense accounts in such a situation, is a book itemizing your expenses sufficient, or must you have receipts?

Mr. EGGER. In the kind of cases that Mr. Shusta described, in his own circumstances, merely supplying us with a contemporaneously kept record showing where he was on which days, and so on and so forth, is, for the most part, adequate, unless there are significant items such as large hotel bills, things of that kind. This is what we're trying to get at, because the code currently requires that taxpayers document or support by contemporaneously kept records, each of their expenditures in the course of travel and entertainment for business purposes.

And so again, as I said, what we're looking at is a way to clarify this by regulation, if we can, without the Congress having to reconsider the whole statute. It is a way of providing a safe haven, if you will, by putting——

Senator DECONCINI. Can you do that administratively?

Mr. EGGER. I do not know that yet. We are looking into whether we can do it by regulation.

EXPENSES AWAY FROM HOME FOR TRADESPEOPLE

Senator DECONCINI. Also, I want to know can you, by regulation, administratively make any alterations or provisions for, in Arizona at least, people who live in one part of the State, particularly tradespeople who are involved in construction, who travel to another part of the State? The most specific example is dealing with the Palo Verde Nuclear Powerplant here. Tradespeople yet are disallowed their expenses because they live within 60 or 80 miles or so of their home, but they do stay there during the week. And they've been disallowed. I know Senator Dole has an amendment that has been offered to specify that they can be allowed.

Are there any provisions to ask the Service to reconsider whatever disallowances they have made in the matter?

Mr. EGGER. The long, long history of our interpretation of the statute on that particular type of expense has been the necessity to be away from home overnight. In other words, we have concluded that unless the taxpayer is, in fact, absent from his home overnight, the mere fact that he chooses to live or does live a longer distance from his work that is usual, does not make it away from home for business purposes. In other words, it's one thing for the individual to drive 50 or 100 miles to the job, and then turn around and come back in the evening, and it's another to be absent for 4 or 5 days of the week and then come back.

In the latter case, certainly just as a general proposition and without trying to undercut Mr. Berry's area of responsibility, if he is away from home overnight, but because of the distance from his home to a temporary job—when I say temporary, I'm not talking about where he's worked for 10 years and been doing this for 10 years, but when he's away on a temporary basis.

Senator DECONCINI. What if he worked there for 2 years or 3 years?

Ms. MYERS. Temporary is the question.

Senator DECONCINI. Maybe. You know, the problem, Mr. Berry at Palo Verde temporary is really the question. How is that determined?

DEFINITION OF "TEMPORARY"

Mr. BERRY. I don't really think that changes the situation, Senator. We have had some difficulty with that for a number of years, and I have seen some of the cases—I'm not familiar with the details of Mr. Shusta's case.

Senator DECONCINI. I'm not talking about Shusta's case. I'm talking about the Palo Verde Powerplant cases.

Mr. BERRY. We had the same problem in the Page area, Senator. We also had it in the Saint Joe area, and the position that we have

taken is correct in the context of the law and the regulations that we have. I know of nothing at this time that we can do to modify that.

ADMINISTRATIVE CHANGE

Senator DECONCINI. Administratively, you can't change the way it's being operated now?

Mr. BERRY. That is correct.

Mr. EGGER. If he's away from home, Senator DeConcini, for an extended period—2 or 3 years—then the regulation regards him as having changed his tax home.

Senator DECONCINI. Yes, but just to give an example. Someone lives in the community that is 90 miles up the road here or more perhaps. Let's say he works in Globe, Ariz., and they work over here at the Palo Verde Powerplant. So they have a 130-mile drive. Now they come in Monday morning and they stay until, say, Thursday night, and they've been doing it for 3 years because that's a big, big operation there and will go on for another year.

They have been disallowed their expenses for that kind of travel because I believe, it's been determined that no longer——

Ms. MYERS. They've been told that that is temporary.

Senator DECONCINI. And I guess my question is, Mr. Berry, why can't that be administratively handled rather than having Congress enact a law saying that that's not temporary? Because it is temporary. That job is going to cease when the construction of that project is over, and it's different than if the person had moved here into this valley and then was working. They haven't. But they have elected to stay at their home and yet the fact that it's 2 years in duration rather than 2 months, it seems unfair.

I wonder, Mr. Berry, why, administratively, something can't be done about this problem?

Mr. BERRY. I would like to look into it further, Senator, and provide you the answer for the record.

Senator DECONCINI. Would you? Let me ask Margot Myers to discuss it with you because we have a number of such complaints and she knows a little bit more about it than I do. Do you want to add anything?

Ms. MYERS. That's all right.

[The information follows:]

DEFINITION OF "TEMPORARY" UNDER THE TRAVEL EXPENSE REGULATIONS

Issue.—Why can't the test of temporary vs. indefinite travel expenses be an administrative determination rather than having Congress exact legislation?

The temporary vs. indefinite test for a travel expense deduction is a question of fact. Many years of successive court cases have refined the definitions of what is temporary and what is indefinite employment. The Service has issued rulings and modifications of rulings to conform to the evaluation of the judicial concepts.

The expense must be for travel or temporary living at some place other than a regular place of employment. A regular place of employment is where a taxpayer can reasonably expect to be employed in a location for a substantial or indefinite period. The choice of residence is a personal decision, unrelated to any business necessity. Thus, it is irrelevant how far a person travels to work.

When a taxpayer can reasonably expect to be employed in a location for only a short or temporary period, the end of which can be foreseen within a fixed and reasonably short period of time, this travel is of a business necessity regardless of the distance traveled. Such temporary travel is a deductible expense. Generally, a

period of more than a year strongly indicates that the employment is not temporary.

Specifically, at construction projects such as the Palo Verde Nuclear Station, the Cholla Power Plant, and the Colorado Power Plant at Page, because of the magnitude of the construction projected, there would be continuous employment for 4 or 5 years for iron workers, pipe fitters, heavy duty mechanics, electricians, asbestos workers, plumbers, boilermakers, carpenters, and most other crafts, which is well beyond the usual one year line of demarcation between temporary and non-temporary employment.

Legislative action would be necessary to permit taxpayers to deduct their travel expenses when the length of employment will last 4 or 5 years. An administrative change permitting that length of employment to be regarded as "temporary" is not feasible because it would be an unwarranted departure from established judicial precedent.

DETERMINATION OF TEMPORARY

Mr. EGGER. I would like to coment, however, that that is simply one of hundreds of similar type situations that we run into, where people don't particularly want to move, but they find another job 150 miles down the road, and instead of moving their families, they simply stay and take up a job there and then commute back and forth, in effect, over weekends. And I'm not sure where anyone can draw a line as to what is temporary and what isn't temporary.

Would, for example——

Senator DECONCINI. Well, if it were a permanent job, if the person were going to be the manager of the powerplant after it's completed I could understand your position.

Mr. EGGER. I appreciate the point.

Senator DECONCINI. And even if you stayed 2 years because you got fired——

Mr. EGGER. But suppose you only had 4 years to go to retirement? Would we call it temporary?

Senator DECONCINI. No, it seems to me what the duration of that job is the key. The manager of this nuclear powerplant could theoretically manage it for as long as he lived, assuming he could keep the job. But a person who is a steel worker on it or an electrician who goes there, their job is going to terminate. We know that. And it's going to be in 1 year, 2 years, or 3 years, some duration like that, and it seems to be very unfair.

The reason I call it to your attention is that it just is a constant irritant of "blue-collar America." They've got their family in Globe or Safford or Tucson or someplace and, why shouldn't they be given some consideration administratively? We've been petitioned to try to pass a law. As the people of this country know and are outraged, we don't have any trouble passing a law for ourselves to give ourselves a tax break. But when it comes to "blue-collar America," I don't think they ought to have any problem with IRS on this issue. But because of administrative rulings and maybe court decisions——

Mr. CARDOZA. There's a long history of court decisions.

Senator DECONCINI [continuing]. They cannot avail themselves of what I consider is clearly a temporary position if, in fact, you know, the job is going to terminate.

Mr. EGGER. Let us do what Mr. Berry suggested and attempt to supply something for the record while at the same time looking at it.

Senator DECONCINI. I would greatly appreciate it because I'm supporting legislation that will attempt to clarify it. But it just seems to be most unfair, and I'm sure that Arizona is not the only place affected. I'm sure there are many places.

Mr. BERRY. It's certainly not.

Senator DECONCINI. But when you know the job is going to terminate because of the kind of job it is, a construction job that ends, that that ought to be temporary. If you know the job is not going to terminate because it can go on as long as the person can keep it, then I think your point is well taken.

LISTENING TO THE PEOPLE

Mr. EGGER. I would like to say, Senator DeConcini, that we are planning to sit through as much of these hearings as we possibly can. Unfortunately, I will have to be absent this afternoon, but Mr. Berry or Mr. Cardoza will be here, and perhaps both of them, right through every single witness that comes before you.

Senator DECONCINI. I appreciate you taking the time, Mr. Berry, and, Mr. Cardoza. I think it's vital that you listen as I listen, or try to listen to people of Arizona and this country because I can't vouch for every one of them that they have not done something wrong. But I know some of them, and I know the people of this State are generally like in any other State. They're solid citizens that have been grieved and they're upset, and they need a forum and they need somebody to listen.

I appreciate your staying in Tucson, Mr. Berry, and taking your time and also you, Mr. Cardoza, and Mr. Egger, and the time that you devote here today. You'll learn something, as I do. Thank you very much.

NONDEPARTMENTAL WITNESSES

STATEMENT OF LAWRENCE J. LEE, TAXATION SECTION, ARIZONA STATE BAR

PREPARED STATEMENT

Our first witness will be Lawrence Lee, of the Taxation Section of the Arizona State Bar. Mr. Lee, are you here?

Mr. Lee, I have to advise you that we have an absolute maximum of 15 minutes per witness. I also want to thank you and the State Bar Association for taking the time to be here. We will maintain our timing system here. Statements can be inserted in the record in full if you care to summarize them.

Mr. LEE. I have a prepared statement which I should like to submit.

Senator DECONCINI. Your statement will be inserted in the record at this point.

[The statement follows:]

STATEMENT OF LAWRENCE J. LEE

Thank you, Mr. Chairman, for this opportunity to appear and set forth certain views before this Committee. Every opportunity to present the grass roots viewpoint is appreciated.

The basic concern is the taxpayer's perception of the taxing system. To us, it appears that the public perceives the system as favoring the more fortunate and as riddled with exceptions that appear to favor the privileged class. This is not to say that the reforms of 1981 (ERTA) should be attacked because any measures designed for capital accumulation and ultimately to increase growth and productivity are to be encouraged. Certainly, the unlimited marital deduction, to cite one example, was perceived and considered a major overhaul long overdue. I should note at this point, that the bar as a group endorses repeal of generation skipping as being unduly complex and limiting for the amount of revenue that it apparently yields.

However, because of the contempt that is gradually building against the apparent inequities of the Code and the enforcer of such system, the Internal Revenue Service, it is believed that a twofold approach must be undertaken immediately. One is that the Internal Revenue Service become of greater assistance to the taxpayers, and, the other, is that the system be tightened so that all taxpayers are treated on a parity.

Curtailment of bureaucracy, cutting back paperwork and budget constraints are all welcome. Nevertheless, the one agency which should have all funds required is the Internal Revenue Service (the collector of the funds that run the government and balance the budget). The computer system is a constant source of complaints by both citizens and professionals. The service sometimes has two or three channels of communications which seldom meet at the computer center. Taxpayers speak in vain to the computer. On the other hand, we are mindful of the enormous paperload facing the Service. The answer is not to curtail the system but to make it right, to update the computer system and to provide skilled personnel who can run it.

The recent budget cuts have forced the Service to curtail taxpayer assistance. Many in this county still live in the belief that the average taxpayer should be able to prepare his own tax return. We realize that efforts on a simplified income tax return, particularly the short form, have been undertaken in Atlanta although the results of such a system are as yet unevaluated. We believe that the Internal Revenue Service should be encouraged in this endeavor and have the funds to pursuit it to ultimate victory. Yet, as long as the system remains as complex as it does, a citizen should have the right to address the system for assistance and answers. We understand that the assistance can be abused and often is. On the other hand, we believe, for example, that telephone assistance should be limited to the public, (not professionals) and that each District should have offices to which the public can go for assistance. The National Office of the Service has also undertaken a public information telephone message system which gives forth answers to standard questions. The approach is well received and should be encouraged. However, it is not a substitute for one-on-one discussion.

This in turn leads to the so-called S cases, small taxpayer filings with the Tax Court. Again, we agree that all citizens should have a rapid, inexpensive and easily accessible forum to resolve their disputes. One criticism is that it yet remains too complex although it is understood that the Chief Counsel is working on this problem. Filing an S case represents a taxpayer frustrated with the system. Unfortunately, good statistics on the nature of S filings are not available. Undoubtedly, a good measure of such cases are filed by taxpayers who resent the system on any terms, such as tax protesters and who are using the mechanism for delay. Still, we believe that a fair number of these cases reflect legitimate differences with the Service.

We have several solutions to offer. However, we do believe that the problem starts with the taxpayer's initial confrontation with the service. Taxpayers are unable to read and

understand the mailings received from the Service. Often these notices are cast in legal language and are ominous and threatening. Because the computer cannot be made to speak to every nuance of a problem, it broad brushes deficiencies under broad categories which provide no clue to the taxpayer as to exactly what is wrong. A taxpayer may be informed that his travel expense has been disallowed but he may not know why -- wrongly claimed, not substantiated, substantiation rejected or what. Next, the taxpayer meets with an office auditor or field auditor. While we fully appreciate that the National Office has on paper, at least, worked an audit system which is both helpful and courteous, we believe that the National Office's perception of actual operations is at odds with reality. We also understand that the National Office has a problem of training and lack of experience. Yet, practitioners know that the auditor is not endeavoring to help the taxpayer but often adopts harsh positions, generally, that the Internal Revenue Service is correct and the taxpayer cannot prove otherwise. We understand the problem. You cannot take an auditor, give him or her a month or so training and expect a college graduate whose father was a doctor, to relate to the problems of a workman in South Phoenix. Nevertheless, the auditors must be given training on how to assist a taxpayer in substantiating the deduction, in evaluating the truthfulness of the taxpayer's statements and representations. For example, suppose that taxpayer X claims a deduction for tools of his trade. Unfortunately he pays cash for his tools and he does not retain the receipts. Three years later he is audited and his deduction is disallowed. While in truth, he cannot directly substantiate his expense for want of receipts, this fact does not mean that the tools are in fact not required for his employment or that he did not purchase them. He should be told, for example, to bring in a letter from his union that tools are required in his trade. He should be told to bring in letters from his co-workers, from his foreman, etc. that he possesses the required tools. Maybe the auditor should go on the job and see what tools he has. Maybe the taxpayer should be told to go to

Sears and get a price list of the tools so that the auditor can evaluate the deduction. Whatever the proper approach, the taxpayer must be helped. Handing the taxpayer an IRS pamphlet on substantiating expense deductions is no solution -- such materials are prepared by those who think like lawyers to be read by lawyers. Checklists, aids to substantiating deductions, practical guides, in plain English, all with helpful suggestions should be made available.

In this regard, the local districts should be made to seek out local assistance on what aids are needed. For example, the copper miner is a common occurrence in the Tucson area. This district should consult with the accounting associations, unions and others familiar with the kinds of deductions which miners are entitled to claim. Problems of substantiating such deductions should be considered and many practical solutions can be worked out, all to the aid of the taxpayer. To our knowledge, the Districts have never done so. And, so if the area is agricultural in occupation, the problems of that occupation can be considered; if timber, the problems of that industry, etc.

One of the concerns that the Service and Chief Counsel have with the S case is that often the taxpayer has no contact with the system prior to the hearing in the Tax Court. We believe this to be an outgrowth of the lack of trust of the Service and its unwillingness to genuinely help the taxpayer. We do believe that the taxpayer should not arrive at a trial without first having tried to resolve the matter administratively. As the members of the committee well know, in this society, exhaustion of administrative remedies is required in virtually every area of the law. Still, while we believe that exhaustion of remedies has merit, the taxpayer must believe that his administrative level attempts will bear fruit. A more informal mechanism must be established. We suggest a system, in small cases only, or at least routine matters only, of binding arbitration, where a taxpayer can go and have his case resolved once and for all. A system where the arbitrator (for want of a better title) has full

power to resolve the matter based on belief of the taxpayer's oral testimony or whatever and without legal requirements of strict proof. It is true that the Service has the Appeals Office which in theory at least could serve this function. However, it is too technically bound and it is associated as but an extension of the revenue agent. The Appeals Office does serve a legitimate function in many areas but not this one. What is needed for small cases is a simple procedure, without procedural rules, where the taxpayer can come, tell his story and have the case resolved with common sense and with some practical sense.

Perhaps it can be analogized to the Justice of the peace system in the judicial network. Without hassle or need for legal training, the individual involved can tell his story, present his documents and often is advised by the Justice as to what other items he can use, what other proofs are needed, etc.

Finally, if the taxpayer must have his day in Court, and he should have that right, we believe that the S case system requires reform. A letter should suffice as a petition. Guides should be prepared, with the help of local lawyers and accountants, on how to prove a case and be given to the taxpayer. Perhaps a checklist can be used, where, for example, if the taxpayer is claiming travel and entertainment expense, he can be given a form for that kind of case, check off some boxes, make some simple inserts and file this as his petition. Motions for more definite statements, etc. should be dispensed with and the burden of proof should be shifted evenly, i.e., that the taxpayer is not wrong unless he proves himself right, but rather the government should be made to come forward with proof (even if it is not more than the taxpayer failed to provide receipts) that the taxpayer is not entitled to the deduction. For example, with all of this simplicity, the Chief counsel will argue that he knows nothing about the case and that often the taxpayer refuses to even discuss the matter with the government's lawyer prior to the actual hearing. Maybe so, and this gets to our solution of arbitration prior to a Tax Court filing. Nevertheless, the Chief

Counsel knows at least that the system has disallowed the deduction for some reason -- the Internal Revenue Service knows why or should know why. Suppose that it was disallowed for want of presenting receipts. The district counsel can argue that it was disallowed for that reason. At that point, the hearing is focused on something and it then becomes the burden of the taxpayer to discuss his receipts, present them, or give an explanation of why he has no receipts. If he does so, the burden should shift to the government to prove otherwise.

Incidentally, while Congress has abolished the so-called "Cohan" rule, it should be reinstated in small case matters. Recall, "Cohan" was a judicially created doctrine that although the taxpayer cannot substantiate his deduction as may be required by statute, still, if common sense demonstrated that he was in the type of business or occupation that called for such expenses, he surely incurred some expense and ought to be allowed some sort of deduction (usually less than claimed and often considerably less than claimed). Very simply, we are asking that common sense be brought back into the small case area.

Collections is another area of concern. We understand that the national fisc should not become the banker for every taxpayer. Still to prevent abuse and to bring even handed treatment to all taxpayers, an ombudsman function should be created in each district to handle collection complaints. We appreciate that the National Office has made great strides with the ombudsman function. Still, we believe that the office must be created specifically in collections and that the taxpayer be informed of that function and given a clear bill of rights and clearly informed that he may take his matter to the ombudsman if he feels that he was wrongly treated. We also understand that some taxpayers stall, lie, cheat and hide assets. But we also understand that taxpayers are threatened and abused and because they fear the system, are runover by the Service. We suggest that all collection efforts (beyond the notice and solicitation level) must be by teams of three or more collection officers so that the system self

polices itself, and no single collection officer can become abusive.

Turning now to larger issues, we favor the measures proposed by Representative Rostenkowski (HR 6300) and those introduced by Senator Dole (S. 2198) and Representative Conable (HR 5829) to strengthen the collection system and bring parity and equity into the system. The concepts are acceptable although considerable difference exists as to measures to be taken. For example, we do not perceive that pensioners are substantial abusers of the system. We would suggest that withholding or extended reporting be limited to pensions above say $4800 per year. We are not in favor of increasing the workload of individuals retired on social security and say a private pension of $300 per month. It is doubtful that individuals at this level owe any taxes anyway.

And while all citizens should be encouraged to file and comply, we are not necessarily in agreement with penalties for failure to file unless there is a substantial detriment to the revenue because of such failure. Most taxpayers only have W-2 income. We suggest, for example, that a system be developed whereby the taxpayer can check a box on the W-4 filed for him indicating that the Service should compute his tax for him and thus alleviate the necessity for a return in the first place. True, this may encourage the taxpayer to "forget" interest or dividends. We believe that most W-2 taxpayers don't have such income but if they did, the computer cross check system can pick that up and maybe the answer is withholding on dividends and interest. We believe that if the taxpayers realize that the computer will pick up interest and dividends, there will be compliance especially, at that point, if a severe civil penalty applies for failure to report such items. This gets back to an earlier point that the Service should be given every means required to enhance and improve and update the computer program.

Nevertheless, passing beyond specific points, we support measures to obtain better compliance. We encourage every effort

being made to eliminate abusive tax shelters. More severe penalties should be applied to shelter promoters and salesmen. But we do not encourage the further application of limited resources to trying to track down and attach each purchaser. This is, in our view, shutting the barn door after the horses are free, instead, the focus should be upon those who market abusive shelters. In fact, we suggest a special appropriation of funds to the Service to give it the wherewithal to attack in this area once and for all and rid the economy and the system of this abuse. In some respects the Internal Revenue Service is hindered in cooperating with state and local authorities (consumer fraud divisions, securities agencies, etc.) because of the privacy of taxpayer information. While we do not desire to open the door on disclosures, we suggest that some consideration be given to permit some information to be released to enforcement agencies. What the taxpayer reports should be confidential. And we understand the self incrimination aspects -- forcing someone to file a return to disclose information that may be later used against him. Still, it is an area that warrants study for at the same time, fraudulent or criminal activities should not be hidden behind a veil of secrecy imposed by the Internal Revenue Code.

Lastly, there is much discussion currently concerning parity in employee retirement plans (The American Bar Association favors parity between individuals, HR 10 plans and qualified plans in terms of allowable benefits). Senator Dole has addressed the problem of "rich doctors and lawyers". He seeks, therefore, an overall limit on the amount that can be contributed to qualified plans initiated by doctors and lawyers and other professionals (with some suggestion that this should be placed at $45,000 per year). Much will be stated in this area, pro and con. Views on this question can differ sharply and we do not comment on the proposal.

We believe, however, that the taxpaying public does not so much view this as an abuse but rather that they do not have parity in their own areas of interest. We know, as a practical

matter, that if qualified plans are substantially eliminated as tax shelters, those who use such plans as a shelter will turn back to the tax shelter market (oil and gas, movies, etc.) to shelter their income. What is wrong, to cite a local illustration is that a doctor can buy himself a benefit now upwards to $136,000 per year (defined benefit plans) and yet a workman who travels back and forth to the Palo Verde nuclear site to work is not allowed his transportation expenses. In this state, the purchaser of a house is not allowed a deduction for the sales taxes paid in making the purchase (all on the technical ground that this state has a privilege license tax and not a sales tax, when we all know that as a practical matter, either form is passed to the consumer). These are injustices in the system, which seem small, yet are more meaningful to the journeyman laborer than the pension plan system applied to doctors. In short, while there is much concern to close so-called loopholes, which perhaps should be closed, the failure of the system is not so much that but rather a failure to perceive the problems attendant to the small taxpayer (such as transportation expenses). Such a taxpayer is not angry with the system because a doctor can contribute to a defined benefit plan but rather that he is disallowed his transportation expense. For example, it is doubtful that most workmen even know what a defined benefit plan is or what the IRC §415 limitation is. They only object because it reflects a favortism to certain classes without really addressing their problems.

We urge that Congress, having effected major reforms in 1976, 1978 and in 1981, devote less time to concerning itself with major legislation and pay more attention to listening at the grass roots for problems of local concern that need reformation and consideration.

Others will speak to the apparent breakdown in the Service's auditing. As resources dwindle and the fact that the chance of being audited becomes less and less, more and more taxpayers will play the audit lottery. We feel that the Service must be encouraged to expand the audit program and should be given the

funds with which to do so. Nothing destroys the system more than the realization that your neighbor is getting away with it and has been doing it for years. This change in emphasis is apparent: The Service has devoted far too much to its tax shelter program all to the detriment of standard audits (on issues such as unreasonable accumulations, etc.). The same thing happened when the Service was put in charge of wage and price controls some years ago during the Nixon administration (general estate tax auditing, for example, dropped to nothing). This is becoming more and more apparent and must be turned around. See, e.g. L&H Tax Wire, a copy of which is attached. And, incident to this, agents must be better trained. Stopping into the taxpayer's office to pick up standard issues (T&E, unreasonable compensation, etc.) permits considerable to pass on the returns without notice.

All of these enhancements required funds. We urge Congress to give the Commissioner those funds. What is said above, of course, fails to give credit where it is due. The Commisssioner's operations are the best in the world and do wonders with the resources available. Still, the computer system, to test on one example, must be strengthened and brought up to date and we see no valid reason why Congress does not provide all funding required.

* The views submitted do not necessarily represent the opinions of the Arizona State Bar Association.

COMMENDATION OF INTERNAL REVENUE SERVICE

Senator DECONCINI. Continue, Mr. Lee.

Mr. LEE. Thank you, Mr. Chairman. My name is Lawrence J. Lee. I'm a lawyer. I should disclose that I am a member of the Commissioner's Advisory Group. However, I speak today on behalf of the section of taxation for the State bar.

The views expressed do not necessarily represent the views of the bar as a whole, just the Section of Taxation which, of course, is concerned with tax matters.

We would first like to note on the record that we do commend the Service for what it does do, with what it has. Now we obviously differ because we are only a private segment opposing the Service, and we differ on many issues. But generally speaking, we think they do an outstanding job with the resources they do have available. There are abuses. I myself, in my practice, have come across them. We do not think, however, they are a part of the system.

We do believe that the national office at least is making every effort to change that, to clean it up, to do something about it. In all of these revenue agencies, you're going to get a nut in every one of them. You know, that's a problem. We understand that. We do have certain recommendations.

CONSTRAINTS BY LACK OF MONEY

Unfortunately, all the recommendations will cost money. Mr. Egger is constrained by his present position with the administration as to how much money can be expended. We think it's up to Congress, however, to fully implement, fully arm the Internal Revenue Service for the job it needs to do. You've already hit upon one, and that is the computer setup. The system must be accurate. It must be quick. It is not responding. It does not hear you. It does not answer you.

I myself have seen notices of levies hit the taxpayer while we're still "talking with the doctor." It's a common problem. We think it has to be rectified.

The equipment is considerably outdated. You need the funds in the Service to update in standards, change in programs, get new modern equipment in. We think funds have to be appropriated to help the Service's effort, continuing effort to simplify returns and reporting.

Now the OMB's efforts to put a lid on reporting and returning are useful. But I think what the Service needs is additional funds to sit down and make a conscientious study of what returns are needed, how they can be simplified, how the whole paper workload can be simplified for taxpayer use.

FREE ADVICE

We think along with you, the taxpayer, assistance has to be restored to the lay public. We quite agree with the national office position that this free advice should not be made available to professionals, that is, lawyers and accountants who want to take the shortcut method of finding out information.

On the other hand, we do believe that every taxpayer and every member of the lay public is entitled to get the help he wants on a one-to-one basis, that is, to talk to somebody. And I appreciate this is a costly proposition. But if we ask these people to come forward to report their income, to follow the rules, if they need help in following those rules, they should be given that help.

RELIEF OF REDRESS

We still believe, I think, that the relief of redress under the system which you already alluded to, the process of getting from ground zero up through the mitigatin of litigation is still too difficult and complex. All the moneys—and I'm sure you've seen them nevertheless reviewed or not, are still legalese. They're difficult to read. They're difficult to follow for the layperson. The process is too long, and it is cumbersome.

In getting up to the Appeals Office, couched more or less in terms of a legal process of moving to a sort of quasi-judicial process, which is minor for me as a lawyer. But the lay public has a hard time digesting, understanding what's happened, and there's a strong belief, I think, that the Appeals Office is, nevertheless, the left hand of the Service. What the right hand taketh, the left hand will shore up. So I don't think there's much faith in that process.

SYSTEM OF ARBITRATION

If you object to the whole system, if you feel that you've been wronged by it, having another walking down, you know, from one office to another office isn't going to comfort you that you're going to get the kind of relief you want. We suggest particularly in small claims or small case matters, simple tax matters, that a system of arbitration be established, a system that requires no pleadings, no protests, no formality. The taxpayer simply comes into the arbitrator or however you want to—you know, whatever title you want to give him. He simply comes in, tells his story, gets a quick and simple resolution, period. No formality. He doesn't have to plead it. He doesn't have to file petitions or anything else.

Senator DECONCINI. This would be a totally voluntary arbitration?

Mr. LEE. Total volunteer system. You just come in and tell your story.

Senator DECONCINI. That's an excellent idea.

Mr. LEE. And this is, in part, what the Commissioner was talking about is to resort, or turn back to what used to be known as the old Cone doctrine. In the Cone doctrine, which is a judicial resolution of problems, they said, Well, the taxpayers comes in and he can't prove it. He hasn't got the receipts. Yet we know by commonsense that he had to have incurred some of these expenses.

Take the case here, the railroad engineer. Maybe he can't receipt it. But we know by the nature of his work he had to be out of town. He had to eat. He had to sleep. He had to incur expenses. And under the Cone approach, the court would look at it with a commonsense point of view and say, OK, you haven't substantiated, yet you have a position. We're going to come to some sort of middle ground that is fair and just to both sides.

Senator DECONCINI. Give something instead of nothing?

Mr. LEE. That's right. And we think there has to be returned into at least the small claims area. And that could be up to $2,500. That could be, you know, $5,000 tax or whatever.

Senator DECONCINI. Excuse me, Mr. Lee. Is it your judgment the Service could not do that now? It seems to me that they could if they wanted to, say, Look it, you don't have this substantiated, but we know from your boss that you were in Benson, Ariz., driving a train and you stayed overnight. So you say you spent $50. We're going to allow you $25.

But as it is now, they don't allow him anything.

Mr. LEE. That's right. It's a very, very difficult problem. I think, however, the Cone approach——

Senator DECONCINI. It is better than just letting the Service do the arbitrating?

RELAXING THE RULES

Mr. LEE. That's right. But the problem is that there will probably have to be some legislation to relax the rules a little bit because the Commissioner is right: The statute's too severely drawn.

Now as a practical matter, you know, there can be some relaxation of it. But some legislative changes will be needed. The next area is the so-called S case, the small case area which the Commissioner also said. Now efforts are being made to clean this up. Congress put this in in an effort to give the individual layman redress. Nevertheless, it is still too complex. It is still in the hands of lawyers. When you appear as a member of the lay public, you appear against a lawyer. We again think that that system has to be modified, and we would ask that the total small claims area, what I call the small case area, be moved into some kind of arbitration process where no formalities are required, no knowledge particularly of the law. You come in and tell your story and have commonsense applied to it. In the area of collections, which is probably the single, largest area of friction, while each district has what is known as a problems resolution officer, or what I'll call an ombudsman concept, we think that that concept has to be clearly expanded where an ombudsman is assigned to the collections function period, so that he can mediate to handle those complaints. Well, it's more difficult because of need for personnel. We do think that collection matters ought to be handled by teams.

There's something about a peer review, peer pressure, where if I personally might be abusive in my handling of you, if I've got other people standing around listening to what I have to say, it generally restrains my antagonistic approach. And we think maybe collection could be better handled by teams of two or three people so that when they deal with the taxpayer, there's a group there that hears what's said, hears what's going on, and hears the facts.

AID IN CRIMINAL PROSECUTIONS

My time is about up. I do want to point out one technical aspect. We are aware of Senate 2565 and H.R. 6475, bills by Senator Nunn, and Representative Rangel, to release certain information to aid in Federal criminal prosecutions. That legislation is bipartisan and is

now moved, I think, and through. We support that. We would say one other thing. Probably you should include cooperation with State level or local level criminal authority. I see no reason why this district, the national office, or example, in tax shelters, tax protesters, that area, shouldn't be cooperating with the Consumer Fraud Division of the Attorney General's Office, with the Securities Division of the Arizona Corporation Commission and working with the local authorities.

And we will urge, and perhaps time has already passed on it, but nevertheless, that type of bill should have been expanded to permit cooperation with state and local authorities as well as Federal authority.

Senator DECONCINI. I agree with you, Mr. Lee. Other bills have been introduced by Senator Chiles and myself that permits just that, and I think Congressman Rangel and Senator Nunn are not adverse to expanding that.

I think if we can get a bill out, we'll see it. Quite frankly, the biggest problem we've had is the Internal Revenue Service opposing it. They don't want to be involved in things other than collecting taxes. And it has had some real dampening effects. So anything that can be done from the advisory board point of view to encourage them to be involved in that area, I think, is very, very important. I thank you very much, Mr. Lee, for your testimony, for being here with us, and for some very, very good suggestions.

ARBITRATION SYSTEM

I have received a statement from the Internal Revenue System relating to the proposal by Mr. Lee for a system of arbitration for small tax cases. The statement will be inserted in the record at this point.

[The information follows:]

ARBITRATION SYSTEM NOT ENDORSED

We have carefully reviewed Mr. Lee's testimony and his proposal for a system of arbitration for small tax cases. The comments that follow indicate why the Service does not endorse a separate system of arbitration.

1. The current Appeals System is working well.

   a. For both 1980 and 1981, of the nondocketed cases received by the Appeals Division, 83 percent were closed by agreement. Small cases, those involving proposed deficiencies of less than $2,500, accounted for over 52 percent of the receipts in 1981.

   b. A GAO report completed in March 1982 indicated:

      - that the majority of taxpayers who had conferences with the Appeals Division did not have a tax professional such as an accountant or attorney represent them,

      - about half of the taxpayers surveyed did not have representation because they felt they could deal with the IRS themselves,

      - 88% of the taxpayes surveyed were satisfied with the Appeals office's competency,

      - 95% of the taxpayers surveyed were satisfied with the Appeals office's courtesy,

      - almost two-thirds of the taxpayers who responded to the GAO survey said they were satisfied with the dollar amount of the settlement.

2. We expect the volume of small unagreed cases to decrease as a result of the implementation of recommendations of an Appeals/Examination study completed in October 1981. These recommendations include:

   a. revision of the initial taxpayer contact letter to encourage additional involvement at the Examination level,

   b. use of periodic joint Appeals/Examination meetings to discuss areas of concern regarding small cases,

   c. providing additional instructions for tax auditors on how to evaluate and when to accept oral evidence,

   d. development of new guidelines for the review of unagreed Office Examination cases where Appeals consideration has been requested,

   e. return of cases to Examination Division by Appeals when taxpayers submit substantial additional documentation in Appeals which the examiner did not have an opportunity to evaluate.

3. A new Chief Counsel Order provides a new procedure for the expeditious handling of small cases. The Order pertains primarily to "S" cases, but many of the procedures, concepts and techniques may be appropriately utilized for other small cases (usually pro se $10,000 or under, tax and penalty, per taxable period). Since approximately 60 percent of all petitioned cases are small cases, particular attention will be paid to maintaining and improving the quality of communications with such petitioners. Oral stipulations of facts will be accepted, and every effort will be made to inform the taxpayer what he/she must do to present his/her case.

4. The potential drawbacks of an arbitration system are numerous.

Since it is unclear as to exactly when this arbitration system would come into play under Mr. Lee's proposal, we will first assume that his proposal contemplates the use of the arbitration system in all small tax cases when the taxpayer has been unable to resolve his dispute at the examination level. In such an instance, the taxpayer would apparently agree to this arbitration system in lieu of the existing administrative appeal process and litigation in the courts. Under Mr. Lee's proposal, the taxpayer would merely tell the arbitrator why he believed he was entitled to a particular deduction or was not required to report income. The arbitrator would then apparently make a decision based on the testimony of the taxpayer and any other evidence or documentation presented by the taxpayer. However, it appears to us that this procedure would not work under a variety of different factual situations and for a variety of reasons. First, if the case was one in which the government had the burden of proof, such as a transferee case or civil fraud case, a representative of the government would obviously have to be present to submit documentation and perhaps call witnesses in an attempt to carry the government's burden of proof.

Second, if it was a case in which the taxpayer had the burden of proof on all issues, arbitration still contemplates a system of settling the dispute in which each party is given the opportunity to present all relevant facts and evidence to the arbitrator so he can make an informed and intelligent decision. Accordingly, while a taxpayer might feel better in dealing with a arbitrator rather than an appeals officer, it will still be necessary for a representative of the Internal Revenue Service to represent the government in an arbitration system.

Another major problem with an arbitration system is that if a taxpayer were aware that he could force the government to go to binding arbitration after the initial examination of his tax return, the taxpayer might be inclined not to submit all his documentation or evidence to the examining agent for a variety of reasons. First, if the taxpayer withholds information which clearly supports deductions or exclusions of income, the taxpayer will be in a position to make it appear that the government was arbitrary in disallowing said deductions unless the actual examining agent is present and testifies that said documentation was never submitted during the initial examination. Second, even if the taxpayer admits that he did not submit certain documentation to the examining agent, the government will not have the option at the examination level to verify the authenticity of these documents or to do other collateral investigations to determine whether all relevant facts have been uncovered in regard to a particular issue.

In certain small tax cases, the existence of complex or novel issues will make it necessary to develop additional factual information. In the absence of a provision that the government may reject the arbitration system in such cases, the government would be forced to go before a arbitrator without the necessary means to fully present the case, such as are available in the United States Tax Court or United States District Courts.

It is our position that the procedure devised by the Tax Court for the handling of small tax cases is so informal that it would not materially differ from any arbitration system that might be set up.

STATEMENT OF RAYMOND SIGAFOOS, CHAIRMAN, INTERNAL REVENUE SERVICE LIAISON SUBCOMMITTEE, SUBCOMMITTEE OF THE COMMITTEE ON TAXATION, ARIZONA SOCIETY OF CERTIFIED PUBLIC ACCOUNTANTS

COOPERATION BETWEEN SOCIETY OF CERTIFIED PUBLIC ACCOUNTANTS AND INTERNAL REVENUE SERVICE

Senator DECONCINI. Our next witness is Raymond Sigafoos, Arizona Society of CPA's.

Mr. Sigafoos, we can put any full statement in the record, if you like. We have some time restraints, but we want to hear from you and we appreciate you being with us today.

Mr. SIGAFOOS. Thank you, Senator DeConcini. And for the record, my name is Raymond Sigafoos. I'm a CPA. I'm chairman of the IRS liaison subcommittee of the taxation committee of the Arizona State Society of CPA's. I'm representing that group here today, and my remarks are generally in regards to the attitudes and the perceptions that we see as professionals in dealing with the Internal Revenue Service.

As a matter of fact, the beginning of my outline talks about my interception or our perception of the IRS by its professional constituents. We've had generally very good cooperation between our society members and Mr. Berry's office, for instance, over the years. But we do have some concerns which I think we would like to bring up today.

DECREASING QUALITY OF AGENTS

Beginning with our perception of what we see happening to the system beginning with the agent himself, we see more agents probably than most taxpayers will ever see in their whole lives. The consensus of our group is that the quality of agents that we're seeing nowadays has declined rapidly in the last decade. We think they're undertrained. I think—we think that circumstances in their organization creates turnover which is counter productive to the administration of the tax laws. We have citations of cases that were closed because agents left the Service, closed in the middle of a case without the case ever having gone through the entire examination procedure and the issues left open that were obviously issues that could have been dealt with and revenue raised. Evidence has been lost with repeated attempts to acquire that same information because of the turnover in agents.

TAX PROTESTERS

Mr. Berry indicated also in his testimony that tax protesters take up a lot of time. I don't know officially what the amount is, but I'm been told by people in the Service that we have a high proportion of tax protesters in this State. And what we see is that the level of enforcement because of the time taken up by tax protesters on examination agents is declining also. As a matter of fact, in rural parts of this State, the incidents of examinations is declining very rapidly, and in my own particular practice, it's been over a year since I had a revenue agent in my office. Now I'm not suggesting

that I want one particularly, and please don't send me one. But the fact of the matter is——

Senator DECONCINI. Your point is that they're so busy, they don't——

AUDIT LOTTERY

Mr. SIGAFOOS. They're so busy dealing with the Palo Verde Nuclear Plant, that they can't come to Prescott and do audits on things they ought to, whether my clients are protesters. What the perception is by the taxpayers that I have talked to, the taxpayers who talked to their neighbors and et cetera, is that the audit lottery works and that because of the fact that we're only auditing 1.34 percent or 1.75 percent or whatever amount of cases, that it's OK. We don't have to report all our income. We can deduct the expenses of the dog food for our dogs, et cetera, et cetera because no one's going to audit us.

And my own clients come to me and say, "Well, why can't I do that?" And the answer is because I'm obligated morally and ethically and legally not to allow you to do that. But your neighbor is going to do it because he perceives to know how the lottery works.

TAXPAYER SERVICES

I would like to put a pitch in, if I will, for an increase in the amount of money spent in the taxpayer service area. When we call, for instance, the taxpayer service, more often than not, especially in the Collection Division, we're going to get a computerized answer. And since we're calling from Prescott which is 90 miles north of here, it may be 2 or 3 days before someone gets back to us. And if I happen to be out of the office when somebody gets back to me, I'm going to have to recycle that, and it's going to be another 2 days.

Senator DECONCINI. Well, that raises a good question. Should the taxpayer service be available for professionals such as yourself and attorneys who are supposed to——

Mr. SIGAFOOS. Not as a research tool. But as my client brings me in a tax notice and they say, "We're going to be levying on your bank account," now, this is the first time I've seen that notice or whatever. I have an obligation to him to try and deal with the system the way it should be set up. So if in one particular case I had here a month ago, the question was how do we forestall this levying on the bank account if he has a legitimate issue, if there is a legitimate problem here?

Senator DECONCINI. So you're saying for the administrative process, it should be there. How would you keep it from being used by professionals for actual solicitation of answers that they're going to charge their clients for, legal answers, for example?

Mr. SIGAFOOS. That's a very thin line that you'd have to draw, and I don't honestly know the answer to that.

Senator DECONCINI. Do you agree that that ought not to be available for professionals, assuming that you could draw the line?

Mr. SIGAFOOS. No question about it.

Senator DECONCINI. Thank you.

Mr. SIGAFOOS. I spend quite a bit of my own money and my own time in my own tax library.

Senator DECONCINI. I'm sure you do.

PROBLEMS RESOLUTION OFFICER

Mr. SIGAFOOS. And I would also like to second Mr. Berry's remarks in regards to the problems resolution officer. We have had a great deal of success working through the problems resolution officer. And in this district, the perception of the practitioners is the problems resolution officer. She does a good job. The bottom line on the Internal Revenue Service seems to be nowadays that the IRS, as a service, isn't providing a lot of service and what we have been led to understand anyway because of the cuts in taxpayer service, because of the lack of agents and the lack of training of agents is that it's a budgetary problem. I think that's unfortunate.

The self-assessment system, if you will, depends on a perception by the taxpayers that it is not only fair and equitable, but that they can get an answer. And if they can't get an answer, or if they don't see it's fair and equitable, the system breaks down.

Senator DECONCINI. Do you think most of your clients think it's fair and equitable?

Mr. SIGAFOOS. I think there's a percentage that don't.

Senator DECONCINI. A big percentage?

Mr. SIGAFOOS. I would guess that it's less than 30 percent.

Senator DECONCINI. Nationally, just for the record, the Gallup poll says about 49 percent of the people think it's unfair.

Mr. SIGAFOOS. OK. What we would like to say——

Senator DECONCINI. I'm just glad in Prescott that they're a little bit more confident in their system. Go ahead.

SERVICE IMPROVEMENTS

Mr. SIGAFOOS. What we would like to see is a reversal over the trend of years to cut back in service. We would like to see better agents. We would like to see better trained agents. Actually, we would like to see higher paid agents, too, because I think if you have a higher paid agent, he's going to be less likely to look around for that job in private industry that's going to pay him two or three times what he's making.

My associate, Mr. Cheifitz will be speaking in a few moments about the area of taxpayer preparer penalties, and he's got quite a few comments to make about that. I have a—just one comment that revenue enhancement is not a reason to further clog up the system with some more unnecessary tax preparer penalties, in my opinion. You spoke a few minutes ago about flat tax rates. I have not seen your proposal.

FLAT RATE TAX

Senator DECONCINI. I'll send it to you.

Mr. SIGAFOOS. Thank you. In general, I would not, and I don't think the society would be very supportive of a flat tax rate system for a couple of reasons. And I'm not sure that a flat tax rate system would be generally economically viable.

Much of the code defines what revenue is, and that's part of the problem is the definition of revenue, who is to mention the 7,000 pages, I would guess, that 50 percent of them define revenue. If you have a gross tax, a gross business tax, and you have a barber that makes $20,000 and a construction worker that makes $20,000, and your tax rate is 10 percent, if the barber pays $15,000 for his business expenses, he's only taking home $5,000. The construction worker is taking home $20,000. The question is: Do you tax the 20 percent—the 10 percent on both the $20,000, and is that economically fair between the barber and the construction worker, and that's—so you're going to have to leave in, if you want to be economically fair, the business deductions.

So really what you're talking about is eliminating the church contributions and home mortgage interest.

Senator DECONCINI. Let me send to you the Hoover Institute Study and the Citizen's Choice interest group that has done a thorough study of just those types of problems. You are correct: There would have to be deductions of what is spent and what is taken in, particularly in the commercial area. But I think you will find it of interest. You may not agree with it. I would appreciate your taking a look not only at our bill, but the Hoover Institute study, and give me your comments on it.

CERTAINTY AND CHANGE

Mr. SIGAFOOS. I have a little bit of background in it because I studied Milton Freeman 15 or 20 years ago when he made the same proposal. I don't necessarily agree with him. What we would like to see seriously in the profession is more certainty and less constant change.

In the past—well, since actually 1969, there has been a major tax bill approximately every other year, and in the area of one area, for instance, the estate and gift taxation, three times in 5 years, a major, almost 180° shift in the taxation of the estates and gift. And when you call your client a third time in 5 years and say, "Guess what, you've got to spend that extra $300,000 because we've got to revise your will again because they just changed all the rules," that doesn't in any way enhance this system because you create so much uncertainty that people just reject the system.

Senator DECONCINI. I agree.

UNCERTAINTIES

Mr. SIGAFOOS. I think further uncertainties in regard to, for instance, in debt equity rules have been bandied about for—well, they were in the law in 1969. Regulations weren't proposed until 2 years ago, and they've been—when are they going to be in effect the question is? The taxation proposals where you set it up so you can—whether or not you agree with that particular provision or not, it was in the law or it is in the law. And if business is going to make any "inroads" into creating a statewide economy, they need to have the space to plan out 4 or 5 years ahead of time. And this is one provision that they might find useful for other reasons.

But I would be willing to bet you there is not a whole lot of planning being in this area at the moment.

Senator DECONCINI. No.

Mr. SIGAFOOS. Because of uncertainty.

Senator DECONCINI. I think that's a point well taken. One of the problems that Congress runs into is that as you go through a tax bill, something like that ends up being in there. And I think that's why there is some movement for a flat rate with no deductions. If you can resolve the problem you've pointed out with business investments and what have you. That's going to continue to happen evey time a bill goes though. Some business advantage is put in there for justifiable reasons, but 2 years later it turns out that the public doesn't like it or the political leaders don't like it, so they change it. So it really has not served any purpose except to protect some income on a temporary basis.

COMPUTER EQUIPMENT

Mr. SIGAFOOS. Finally, I have one more comment, and that's a comment that Larry Lee made. It's also one that Commissioner Egger made, and that is in regard to our computer systems.

You're using computers that are 20 years old. I have not—I'm not a computer professional, but I have watched what's happened in the industry in the last 5 years. Twenty-year-old equipment isn't doing the job for you. And it is creating massive amounts of problems.

Senator DECONCINI. Thank you very much. We appreciate your testimony and your taking the time to give us some of the excellent ideas that you have.

Mr. SIGAFOOS. Thank you.

STATEMENT OF A. J. CHEIFITZ, CERTIFIED PUBLIC ACCOUNTANT

APPLICATION OF REGULATIONS

Senator DECONCINI. Our next witness is A. J. Cheifitz, also a CPA. Mr. Cheifitz, we welcome you here.

Mr. CHEIFITZ. I'm here this morning as a practicing CPA. I've got a background here in Arizona as well as nationally through my former association. Primarily today, I would like to talk just a little bit about legislation that has been set up with regard to practitioner penalties, and what I perceive as an attempt to more or less enlist the professional community to aid in the activity of the Internal Revenue Service.

The Internal Revenue Code sections 6694 and 6695 were put into the law in 1976 in the Tax Reform Act. Frankly, they were perceived first as a means to eliminate the so-called store-front practitioner, or at least to so regulate him that some of the problems that were being created in that area would no longer be there.

Unfortunately, the rules were applied very strenuously to all sectors of the tax preparation field. And due, as I understand, primarily to a lack of training on the part of the IRS, those laws were applied—those rules were applied somewhat selectively and somewhat indiscriminately throughout the United States.

In some areas through the State societies of CPA's and through the bar associations, we were able to back off some of the procedures and get the application of those rules down to a reasonable

level. In other areas, the Internal Revenue Service has to call in their people and school them themselves. It was basically a lack of understanding perhaps of the reasons behind those rules.

Senator DECONCINI. Does that happen in Arizona?

Mr. CHEIFITZ. It happened in Arizona. It happened in New York. It happened in California. It happened in Illinois. It happened in Hawaii. And because I was very involved nationally at that time, I was very much involved in assisting those particular State societies in calming that particular activity.

Senator DECONCINI. When did that happen in Arizona?

Mr. CHEIFITZ. In Arizona, most of the problems were coming up in the 1979–80 area.

Senator DECONCINI. Has it been resolved?

TIGHTENING PROCEDURES

Mr. CHEIFITZ. Pretty much so. We think that both the practitioners and the IRS have a much better understanding of the use of those rules. Now, those rules were not applied badly in all cases. I think that they cleaned up a lot of procedures on the part of both professional and nonprofessional practitioners. I think they created an atmosphere in which we all thightened up our procedures. We did a little more to make sure that the returns that we were preparing were better prepared, let's say.

On the other hand, the professionals for practitioners were pretty well able to protect themselves to get this kind of a job done is order to protect themselves and their clients, but at some cost to their clients because the time involved in preparing returns now involves on the part of most firms, some three to six steps of checking and rechecking.

IMPOSING PENALTIES ON TAX PREPARER

The creation of an inadvertent or mathematical error was often used as a means of imposing penalties on a taxpayer preparer representative. In other words, there's no return that I have ever had a chance to review that was completely free of error. But the slightest error for some time was used as a means of imposing a penalty. Now whether this was being used as a deterrent or as a threat, I'm not sure, but it was being used by the Service or some of the representatives of the Service merely to throw their weight around. Again, I'm not certain.

TAXPAYER COMPLIANCE IMPROVEMENT ACT

I think perhaps both of those things were true. Recently, you and I have had some correspondence with regard to S. 2198 regarding the Taxpayers' Compliance Improvement Act. I'm not in agreement with your stand on that as you're probably aware. The act, I feel, based on practice and experience, will serve only to bury further some of the transactions on the part of those taxpayers who don't wish to disclose. Certainly, if they disclosed to a qualified practitioner, he is going to place in the return his own understanding of the law and of the transaction. But if a taxpayer really has something that bad, he's just not going to tell us about it, and so

this type of legislation tends to drive that sort of transaction farther and farther away from the qualified practitioner. It is not going to, in my opinion, increase revenue. It is merely going to put another barrier between the taxpayer-client and the person who prepares his return.

It would be easy today to sit here and give you all sorts of complaints about the Internal Revenue Service and its operation. And I did not bring my horror story file with me. I don't think they're all bad. And I've enjoyed an adversary relationship with them for about 30 years now. Frankly, I think most of the problems stem not from—so much from the over-zealous agent or District Director or somebody in between. I think most of the problems relate to the effects of the constant legislative change, and Mr. Sigafoos alluded to that. The changes create confusion on the part of the Internal Revenue Service and on the part of the taxpayer certainly, and on the part of the practitioner.

NEW LAWS AND LEGAL INTERPRETATIONS

Every time you come out with a new revenue law, we go back to the books, and we've got to structure and restructure how we handle things, how we understand the law.

Senator DECONCINI. Excuse me, Mr. Cheifitz. Doesn't that occur even when there aren't constant changes by court decisions?

Mr. CHEIFITZ. It occurs, but at a much slower rate, and it at least allows people, taxpayers, to plan their affairs based on what is already there, not on what they fear will be coming, as is the case today.

Senator DECONCINI. Do you mean you have less changes via court decisions in a period of 12 months or 24 months than you do by congressional decision?

Mr. CHEIFITZ. I believe that's the case.

Senator DECONCINI. Thank you.

Mr. CHEIFITZ. There are uncertainties as to interpretations in the law. And every time a new law is passed, someone has to interpret it because not all of us read the language in the some manner. There are certainly uncertainties as to the application of the law since various districts of the Internal Revenue Service and various courts may take a different view of the laws that have been passed.

We do not have a national system of law on taxation depending on the type of case, and in my own research, I can get a different result depending on where I want to have an attorney take that case within that system.

Senator DECONCINI. It depends on what circuit.

Mr. CHEIFITZ. What circuit, and just which way I want to go. I think that's unfair. And yet the taxpayer didn't create this tremendous monster. I feel that you gentlemen in the Congress have.

Senator DECONCINI. We should have a tax court hold an appellate decision for the country instead of by the circuits.

RESISTANCE TO CHANGE

Mr. CHEIFITZ. I would certainly agree with that. And I once made the remark to a Senator at a luncheon that whatever law was passed that affected revenue that the House and the Senate should

have to apply that law in their own tax returns and prepare the returns themselves for 3 years before it was released to the general public. He refused to speak to me for the rest of the luncheon. There is a basic resistance to change.

Senator DECONCINI. I'm a good customer of you fellows.

Mr. CHEIFITZ. All right. We don't need change to keep us in business. The complexity of the law is not of importance to us from the standpoint of staying in business. There are many, many things to do as a CPA. The high tax rates and a growing distrust in the equity of the system are—have a great deal to do with the problems that the Service is experiencing in getting people to file and in getting collections. Of course, that is related also to the economy.

Senator DECONCINI. Do you think if we left the laws alone, good or bad as they are, there would be more credibility in the public's mind of our system?

Mr. CHEIFITZ. Very much so. I think it's time to settle it down. While business grows more complex, I think sometimes the——

INCENTIVE TO MAKE CHANGES

Senator DECONCINI. That's an interesting proposal because I think Congress is reflecting the same high anxiety or frustration that you mention with all the changes of trying to make changes where the public will accept it more. It just seems to me the more changes we make, the worse it gets.

But I think the incentive to make those changes is to try to satisfy the public that, by gosh, we're trying to be fair, and this system is going to work, and it's not going to give anybody super advantages. But in fact, it's perceived that it does just that.

Mr. CHEIFITZ. I find that we're going farther and farther away from the self-assessment system. In fact, the numbers that the Commissioner gave with regard to inquiries and that the District Director gave with regard to inquiries should point out that people don't understand that law, and a law that is not understood cannot be enforced. And I suggest that along with some consideration for upgrading and training, perhaps in the computer area which are details, a great deal of thought be given to cleaning up the tax law from the standpoint of leaving it alone for a period of time. Thank you.

Senator DECONCINI. Thank you very much, Mr. Cheifitz. We appreciate your testimony here and your taking the time from your busy schedule to be here.

Our next witness will be Richard Mettler, Arizona Homebuilders Association.

STATEMENT OF RICHARD E. METTLER, EXECUTIVE VICE PRESIDENT, HOMEBUILDERS ASSOCIATION OF ARIZONA

PRIVILEGE TRANSACTION TAX

Mr. METTLER. How are you, Senator?

Senator DECONCINI. Very good. Thank you, Mr. Mettler.

Mr. METTLER. My name is Richard E. Mettler. I'm executive vice president of the Homebuilders Association of Arizona, 4621 North

16th Street in Phoenix. I represent the homebuilders who do approximately 65 percent of the homebuilding volume in Maricopa County. I would respectfully request that the county and Federal Internal Revenue Department allow the transaction privilege tax deduction from the Federal income tax by the home purchaser. This tax is levied by the State of Arizona on all new home purchases and is referred to in title 15, article 6 of the Administration of the Rules and Regulations of the State of Arizona.

SALES TAX

The Arizona transaction privilege tax is commonly known throughout Arizona and referred to as the State sales tax. At the present time, the Federal Internal Revenue Department does not allow the deductions as a result of a memorandum being issued on December 21, 1979, by the chief of the individual income tax branch. In order to assist your understanding, I will briefly explain the history of the State sales tax.

Prior to January 1, 1979, the calculation of the State of Arizona sales tax on new homes was so complicated that a homebuilder or a home buyer could not tell what the true sales tax was on that home. The reason for this was that everyone involved in the building of new homes, subcontractors, suppliers, et cetera, have to pay their share of the sales tax and did it on their own gross volume, whether they worked for 1 homebuilder or 15. As a result, it was impossible for a homebuilder to pull out the sales tax from his other costs, and as a result, the home buyer could not know what his tax was.

This confusion and the fact the home purchaser could not deduct the tax from his Federal income tax, created pressure on the State legislature to change the calculation of sales tax so that there was no question about the amount of tax paid in order for the home purchaser to get the deduction from the Federal income tax. Therefore, the State legislature passed legislation in 1978 changing the calculation of the State sales tax beginning January 1, 1979. One change the legislation made was in calling the prime contractor responsible for calculating and paying the sales tax on new homes.

In our case, the prime contractor is the homebuilder and only the homebuilder. The second change was very simple. It called for a 35 percent to cover labor, across-the-board deduction, plus a deduction of fair market value of the land from the selling price of the home. The net amount is then multiplied by the State sales tax to calculate the amount owed.

CALCULATION OF TAX

As an example, take a $60,000 home. The tax would be figured as follows: $60,000 minus 35 percent, or $21,000 leaving a balance of $39,000, less land value of, say, $12,000, leaving a taxable total of $27,000 on that home. With the State sales tax percentage of 4 percent, a tax of $1,080 is owed. This is paid by the prime contractor or the homebuilder. The tax is then included in the price of the home.

The same calculation is used on all new homes in the matter of the purchase price. The third change in setting up the new tax cal-

culation method, the legislature made it mandatory that the homebuilder give the home purchaser a State sales tax receipt. The sole purpose of the State sales tax receipt was to allow the home purchaser to submit it with his Federal income tax returns so he could deduct the State sales tax from his Federal income tax.

The clear intention of the State legislature in changing the tax calculation method was to allow the home purchaser to deduct the State sales tax. We were heavily involved in legislation, and we were told by all the city tax department heads, the State tax department heads, that this was allowed and would be allowed, and we agreed to it because it did raise our taxes, but we felt that the home purchaser would get a benefit from it.

NONALLOWANCE OF DEDUCTION OF TAX

Up until December 31, 1979, the Internal Revenue Service did allow this tax to be deducted. It was only as a result of the December 31, 1979, memorandum that the policy was reversed. The memorandum stated:

> Because these taxes are not measured by all the gross receipts from the contracting services rendered, they do not qualify in general sales tax within the meaning of section 1.164-3fl of the regulation.

This is not true, in my opinion.

Everything that goes into that home is used as a gross to figure in the sales tax. To us, it is very clear and it is a sales tax. To the Internal Revenue Department, I believe they realize it is a sales tax, but have turned it down on a technicality. The tax receipt made mandatory by the State of Arizona has a tax separated on it, and many of our sales contracts also separate the sales tax.

In many other States, you allow sales tax to be deducted. We, therefore, request that the Internal Revenue Department of the Federal Government reverse their arbitrary policy and allow the purchasers of new homes in Arizona to be able to deduct the Arizona sales tax from the Federal income tax because the Arizona legislature's clear intention in changing the tax calculation method and making mandatory the issuance of the sales tax receipt, its clear intention was to allow the State sales tax to be deducted from the Federal tax. Thank you very much.

Senator DECONCINI. Is there a tax on the sale of a used home or a home that is not——

Mr. METTLER. No; just new homes.

Senator DECONCINI. There is one now? When did Arizona enact this? I forgot.

Mr. METTLER. January 1, 1978. It was enacted in the 1978 session. January 1, 1979, I mean.

Senator DECONCINI. That certainly doesn't help the homebuilding business, I suspect.

Mr. METTLER. It does not.

TAX TOTALS

Senator DECONCINI. Do you have any idea of what this amounts to in dollars?

Mr. METTLER. Probably over the past, since it's been enacted, probably $18 million, I'd say, in that vicinity.

Senator DECONCINI. $18 million that has been paid?

Mr. METTLER. Yes; and I have many home buyers call me saying why, and it's tough for me to answer.

Senator DECONCINI. Do you mean why is the tax there, or why is it not deductible?

Mr. METTLER. Why is it not deductible?

Senator DECONCINI. That's a good question. Very good. I'm glad you called that to our attention, and we will pursue that with the Service, Mr. Mettler. We thank you for being here for the homebuilders, and for your interest in this matter.

[Information in deductibility of transactions privilege tax appears on p. 204.]

STATEMENT OF KIRK McCARVILLE, ATTORNEY

ILLEGAL TAX PROTESTERS

Senator DECONCINI. Our next witness is Kirk McCarville, attorney at law. Glad to have you with us.

Mr. MCCARVILLE. For the record, my name is Kirk McCarville, and I'm an attorney from here in Phoenix. Senator, several of the issues that I wanted to cover have already been more than adequately covered by Mr. Lee, Mr. Sigafoos, and the others. But I did want to address one issue, particularly one term that has been bantered around this morning, and that is the term "illegal tax protesters or tax protest" and the treatment that that term is given by the Internal Revenue Service.

I can only talk in context of my clients who have been so labeled, but I consider myself here this morning a tax protester in the sense that I'm here to protest some of the areas of the Internal Revenue Service, but also commend them on other areas. I don't feel that the people that I represent who have been labeled tax protesters are insidiously greedy or criminal in nature. I consider them to be very worthy individuals, and more than anything else, they want equality under the tax law.

I think a perfect example—and we've addressed the Palo Verde issue a couple different times in regards to travel and, I believe, the W-4 issue may have been mentioned earlier. But if you have an individual working at the job site at Palo Verde who's W-4 exempt and is having no income taxes withheld from his wages, and you have another individual out there who's married and has five kids and who's been put on single and one, which is a common phenomenon out there, you have a tremendous amount of unequality—inequality between these two individuals. You get the same type of reaction when you deal with the living away from home expense which is a very difficult issue for both sides. But I'm concerned about the treatment of the taxes that so-called tax protesters get.

And on Wednesday, Don MacPherson testified at your Tucson hearing. And I'd like to supplement his testimony a little bit and then add my own.

MEMORANDUM OF SURVEILLANCE

Mr. MacPherson testified that he had spoken at a seminar in Houston, and I believe he testified that his speech, as well as those of other attorneys from across the country was monitored and recorded by special agents from the Criminal Investigation Division of the Internal Revenue Service. A memorandum of surveillance was prepared and submitted entitled "Illegal Tax Protesters."

I'd like to read for the record portions of that, and then I will submit a copy. I would like to state that one of the purposes of the meeting in Houston was identical to certain portions of the testimony that are being given here today. As I said, the IRS labeled the speakers and attendees of this meeting as "illegal tax protesters," an administrative predetermination of their part of the legality of these individuals' actions.

It has been my experience that any individual who does not immediately voluntarily comply with the requests of the Internal Revenue Service will receive this label, and that comes from my professional practice. Particularly if this taxpayer asserts his constitutional rights during the course of an involvement with the Internal Revenue Service, whether it be a summons proceeding, a criminal investigation or the typical example is the housewife whose husband is working, who has attended some seminar someplace who goes down during an audit and is so petrified that she says fifth amendment, fourth amendment, or first amendment.

If you do a "Freedom of Information Act" on that taxpayer, more often than not, you will see the classification "illegal tax protester," which takes it out of the normal handling of the case. It will be treated differently than others who are similarly situated in the course of an audit.

SESSIONS ATTENDED BY SPECIAL AGENTS

The first session that was attended by the special agents was entitled "Lawyers Speak." It was an open forum that was attended by approximately 300 individuals. And I'll read from the memorandum of surveillance. Attorney Arthur Tranakos spoke on "How To Maintain Your Records for Use in Trial and How To Trip Up the Government Agent." Don MacPherson spoke on "Types of Government Attacks Versus the Patriotic Proper Response." Mike Parham, who was also an ordained Baptist minister, spoke on "The Theological Concepts of Justice and Law."

John Matonis spoke on "Defense Techniques Against Various Government Attacks," and Scott McLarty spoke on "Decisionmaking in Criminal Cases."

Senator DECONCINI. Is this from the memo you're reading now or from the program?

Mr. MCCARVILLE. Quoting from the memo.

Senator DECONCINI. Quoting from the memo?

Mr. MCCARVILLE. Right.

Senator DECONCINI. Thank you.

Mr. MCCARVILLE. And those were all attorneys who gave an open forum talk that afternoon. The second session was a closed-door strategy session that was supposed to be attended only by attorneys and paralegals.

At that session, those individuals—and again, I'm reading from the memorandum—were as follows: Arthur Tranakos spoke on "The Tax Lawyer Speaks: How To Present the Case From a Tax Standpoint." Don MacPherson spoke on "Pretrial Motions and Overall Trial Strategy." John Matonis spoke on "Continuances, the Speedy Trial Act and TV Cameras in the Courtroom." Mike Parham spoke on "The Home-Church Procedure in Tax Court." Scott McLarty spoke on "Jury Selection, the Jury Charge, Evidentiary Matters and Disqualifying Judges."

GATHERING OF INFORMATION

The rest of the memorandum is the agents' objectives synopsis of the lectures with references to the cases that were cited. Now this material is obviously not any great secret. But what I'm concerned about was the manner in which it was gathered by the Internal Revenue Service.

I'm concerned about special agents from the Criminal Investigation Division coming forth in a clandestine manner and gathering information in that type of form. Quite frankly, I'm very concerned about how far the Internal Revenue Service will go in their enthusiasm to obtain a conviction. I'm sure the Senator's aware of the Supreme Court case of the *United States* v. *Paynor*, which I find appalling and quite frightening. As a U.S. citizen, I am concerned that when I exercise my first amendment right, as I have, to speak on these issues, that an agent of a Criminal Investigation Division of any Federal agency will be surveying my talk.

POTENTIAL FOR ABUSE

The IRS has a very difficult job. But what is frightening is that they work under a set of statutes, rules, and regulations that are both civil and criminal in nature, and so intertwined as to create a very dangerous situation for the citizens of this country. And that's the exact situation that was addressed by the Court, in *United States* v. *LaSalle*, which was a summons enforcement case. And the Court addressed the issue that the code is so intertwined between the criminal provisions of the code and the civil provisions of the code that there is room there for abuse. I am concerned that the IRS uses their criminal authority in a purely civil area where they become frustrated. I believe that the IRS has not undergone the spotlight scrutiny that other municipal, State, and Federal policing agencies have undergone since the late 1960's. I would like to say that I have dealt with most, if not all, levels of the Internal Revenue Service. I have dealt with the field auditors, the revenue agent, the revenue officers, appeals, district counseling and the Justice Department. And generally at all of those levels, I have dealt with extremely competent, professional individuals well versed in the law.

However, the IRS is not a typical Federal agency. It is charged with the responsibility of administering and collecting, but not making the tax laws in this country, in my opinion, an explosive area with a potential for abuse.

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I think the type of hearings that you are conducting is critical to the proper operation of the agency itself and to the citizens of this country. Thank you. [Applause.]

MEMORANDUM SURVEILLANCE CONCERNING ILLEGAL TAX PROTESTERS

Senator DECONCINI. Mr. McCarville. I thank the spontaneous support there for your testimony. It was very eloquently delivered and certainly of concern to all of us. However, I think it's important that we attempt to keep these hearings as professional as we can. I am interested in that memo. Were those attorneys classified then as illegal protesters in the memo?

Mr. MCCARVILLE. Well, I will give you a copy today, Senator. But the entire memorandum is entitled "Memorandum Surveillance Concerning Illegal Tax Protesters".

Senator DECONCINI. The memorandum will be placed in the record.

[The memorandum follows:]

MEMORANDUM OF SURVEILLANCE

In re: Illegal Tax Protesters

Date: November 14, 1981

I attended the Saturday session of the National Patriots Network "The Lawyers Speak". Special Agent Susie Wong and I were present during the entire session from approximately 9:00 a.m. until 5:30 p.m.

Tim Yorgan of the Wisconsin Society of Educated Citizens was Master of Ceremonies. The speakers for the day were:

Speaker	Topic
Arthur Transkos	How to Maintain Your Records for Use in Trial and How To Trip Up the Government Agents
Don MacPherson	Types of Government Attacks vs the Patriot Proper Responses
Mike Parham	The Theological Concepts of Justice and Law
John Matonis	Defense Techniques Against Various Government Attacks
Scott McLarty	Decision Making in Criminal Cases
Gordon Stebbins	Playing Games with Judges, Prosecutors and Special Agents

Attached to this memorandum are the tape recordings of the above-listed speakers made by the Network at the time of the speech.

Jan Parham
FTS: 527-5642

MEMORANDUM OF SURVEILLANCE

In re: Illegal Tax Protester Project

Date: November 15, 1981

Place: Doubletree Hotel
Drummett Blvd.
Houston, Texas

I attended the Lawyers Technical Session of the National Patriots Network presentation on the final day of the seminar. The seminar was from approximately 9:00 a.m. until 5:15 p.m. and I was in attendance during the entire session.

I heard the following speakers and the following topics:

Speaker	Topic
Arthur Transkos	The Tax Lawyer Speaks: How to Present the Case From a Tax Standpoint
Joe Izen, Jr.	Unknown
Don MacPherson	Pre-Trial Motions and Over-All Trial Strategy
John Matonis	Continuances, the Speedy Trial Act and TV Cameras in the Courtroom

Mike Parham	Home Church Procedure in Taxcourt
Scott McLarty	Jury Selection, the Jury Charge, Evidentiary Matters and Disqualifying Judges
Gordon Stebbins	New Developments-My Progress on W-4
Jerome Daly	Defending The Home Churches in Related Business Activities

On order is the tape-recording made by the network of John Matonis. This tape will be submitted upon my receipt. Attached is a synopsis of the speakers and their topics. I was the only Special Agent attending this session.

Jan Parham
FTS: 527-5642

MEMORANDUM OF PATRIOT NETWORK SPEAKERS

In re: Illegal Tax Protester Project

Date: November 15, 1981

ARTHUR TRANAKOS: Tranakos spoke of recent cases he has tried in the tax protest area. He suggested to the other lawyers that they use a defense based on a different method of accounting than used by the taxpayer on his filed return. He told of his experience in a trial where he used this defense and subpoenaed the Regional Counsel head as a defense witness. He put him on the stand and asked him if the percentage of completion method of accounting was a generally accepted method. He said that Regional Counsel stated it was and yet the Judge still would not let them use that method of computation as a defense to the Government's method of computation used in the criminal prosecution recommendation.

Mr. Tranakos also suggested that the Patriot Network needed to find people in the area of tax law and accounting who are willing to get involved in the fight and get them qualified as an expert witness and start using them in trials.

JOE IZEN, JR.: Izen spoke about his experiences in defending criminal and civil tax cases. He said that he had not lost any case that he had been involved with from its inception. He talked about demanding that each question to clients (the taxpayer) be put in writing by the agent (Revenue or Special) so that the Agent cannot say that the taxpayer failed to answer questions based on the Fifth Amendment claim. He said that unless each question is individually addressed to the taxpayer in writing, they cannot say that the taxpayer failed to answer questions based on his Fifth Amendment right.

In the absence of an affidavit, Izen said, they should not be able to cite you in court for refusing to answer questions. He quoted Wallace vs. U.S., a case in the Eastern District ofTexas (Ft. Worth Federal District Clerk). He also cited Donald Wharton vs. U.S., a case in the Western District of Texas (Waco Federal District Clerk)

He suggested to request an in-camera review since the Government was always doing it. He suggested representing witnesses before a Federal grand jury.

Izen said that a current practice of the U.S. Attorney's office is to state on subpoenas that materials subpoenaed may be delivered to the IRS agent serving the subpoena; he said this is a violation of the law. Grand jury subpoena power is much stronger than summons power.

Fifth Amendment type returns do not sell in Texas, he said. He cited a Los Angeles case, Gail Sanocki to illustrate some point. He said that during 1974 through 1978, the Government did not prosecute anybody with

less that $30,000.00 income til Charles Rice in Dallas. Now they use selective prosecution

The Judges instruct the jurors assuming that the return is wrong. Take the Fifth Amendment protection only on those questions which you really fear. The Tax Court is in trouble and they are moving tax protesters to the front of the docket.

I submit that they are bringing fraud into each case. A 1040 should be given to each prospective juror and asked if this form could incriminate someone if filled out correctly. The juror should be made to respond yes or no. If they respond "no", they are then prejudiced against the taxpayer.

DON MACPHERSON: MacPherson handed out a two-page legal document with different motions listed. He suggested that attorneys file all motions which could be linked with their clients' case to help delay proceedings. He advocates the "Attack" theory and proposes three ways to attack: Dismissal, Delay and Discovery.

I attack the prosecutioner. The Government always makes mistakes. One of your trial strategies might bethat this is a prosecution.

MacPherson cited U.S. vs Dougherty, a Dist. of Columbia Circuit case.

He suggested that you ask for witness testimony a day in advance. He said usuallt judges give you documented testimony 24 hours in advance, but under Jencks he asked for witness testimony too and he got it.

MIKE PARHAM: Parham talked about the church issue. He said that they needed to get things to the point where they want the church issue being challenged, not the tax issue. He made a proposal that for individuals with a home church and in the situation of not so good income, take your salary and contribute 50 percent back and keep those records (receipts).

Parham said that they way things are now, IRS is challenging the tax issue, not the issue of whether the individual has really established himself and his home as a religious organization and sanctuary.

SCOTT MCL .TY: Get FOIA requests going, it can mean the difference between winning and loosing. Summons enforcement will give you about a two year delay. Then at trial, put the Special Agent on the stand and re-question him about the same facts during the summons enforcement (you should have a transcript of the summons enforcement). The Special Agent might forget his testimony of two years ago and you can trip him up.

The frivilous motion is the one that has not been asked.

File evidentiary motions to get a feel of what the case will be and educate the judge if you are refusing to write in figures on your return based on the Fifth Amendment.

File a grand jury motion if you can.
Do not talk plea until you have filed your motions.
Look at what other lawyers have done in other cases.

Pre-trial Discovery--Get all reports, the Special Agent's, District Counsel's, Regional Counsel's. Order the AUSA to produce exculpatory information.

Keep on-going Brady motion going. Always ask for disclosure of informants, get Special Agent on the stand and make him testify under oath that he does not know the informant (you might find out years later he lied). They have a form, 3949, that they use to start cases and they put that the information was received from an anonymous informant--usually the agent knows the identify of the person informing.

Jury selection--compare your client with the jury (mentally). Try to pick your foreman in voire doire. Jury selection is critical. Decide who the USA wants and you do not want. Let USA strike first, because he might be striking a juror you wanted but were saving in case you didn't have strikes left and the USA will then get rid of an undesirable juror.

Choices--Do I make an opening statement or wait until the government has finished its case and make the opening statement before presenting the defense. Judges like aggressive lawyers--be aggressive.

Jury nullification--NO--unless you know your client will do time any way.

Use experts--Bowie vs. City of Columbia can be used against a charge that the 5th Amendment return is not a tax return.
If you win your case, go to the local press and your client can say this was a test case. If you lose your case, the IRS will publicize that fact widely. They do not publicize the cases they lose.
You can file a motion to disqualify the Judge: it must be accompanied by an affidavit stating good cause.

GORDON STEBBINS: Stebbins' said that the IRS was coming out with a new Form W-4 which allowed up to 14 or 15 exemptions before they were being looked at now as protest-type W-4's. He said this was an indication that their cause was having effect on the IRS and that the IRS was weakening.

JEROME DALY: Daly told about handing out petitions in front of Judges' churches and let the congregation be reading about what a son-of-a-bitch the Judge is instead of the Bible. He said this is sometimes very effective against the Judge and his negative attitudes toward "tax protesters". He said in his particular case when this was done, the elders of the church called him after reading the petition and said they had called the Judge into their chambers to question him about the allegations and were not satisfied with his answers. They told Daly they were on his (Daly's) side and if they could help him, they would.

Daly advocated using petitions and the legal process if it would work, and said that if it did not then there was only one other way--violence.

He talked about being deprived of due process when his license to practice law was taken from him. He said that after his conviction in 1964? he received a notice from the State Bar in 1969 that he had been disbarred. He said that he had not had a hearing or been notified in any way that disbarrment was even being considered.

Jan Parham

MEMORANDUM OF SURVEILLANCE

Special Agents of the Criminal Investigation Division of the IRS Houston District did attend the November 14-15, 1981, seminars described by Mr. MacPherson, and did prepare a Memorandum of Surveillance on both these sessions. Additionally, they purchased or ordered tape recordings made by the National Patriots Network of the various speakers.

The November 15 session was advertised as a "closed" Lawyers Technical Session. However, while attendees were required to state their name and occupation, no effort was made to exclude anyone from this meeting. One Special Agent attended this session, stating that she was a a legal secretary entering para-legal work.

These efforts were part of the Service's Illegal Tax Protester project. The circumstances under which any information gathering is conducted as part of this or any other such project are closely governed by the provisions of the Internal Revenue Manual. These guidelines are tightly drawn and carefully developed in order to prevent any improper activities by the Service.

For example, the Manual states that any such project must be described in specific terms in writing, and approved in writing by at least the District Director. The Manual does authorize surveillance as part of an information-gathering project in cases where information having tax significance would not normally be available through other investigative techniques. However, it also states that "Surveillance activities at tax protest meeting will be limited to attendance at those meetings for purposes of identifying leading figures in the illegal tax protester movement and obtaining information concerning new techniques being advocated in these so-called tax protest movements."

The activities of our Houston personnel were completely in line with Service policies and procedures in the situation described by Mr. MacPherson. The project had been approved, in writing, by the District Director in advance. The agents at the seminars conducted themselves in a manner totally consistent with established Internal Revenue Manual procedures. There is no indication of any improper action here by the Service or any of its employees.

As additional background on the illegal tax protester problem, a copy of the Commissioner's June 1981 testimony on this subject is attached.

OPENING STATEMENT OF ROSCOE L. EGGER, JR., COMMISSIONER OF INTERNAL REVENUE BEFORE THE COMMERCE, CONSUMER, AND MONETARY AFFAIRS SUBCOMMITTEE OF THE COMMITTEE ON GOVERNMENT OPERATIONS, U.S. HOUSE OF REPRESENTATIVES ON ILLEGAL TAX PROTESTERS—JUNE 10, 1981

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

I AM PLEASED TO BE WITH YOU TODAY TO DISCUSS THE INTERNAL REVENUE SERVICE'S POLICIES AND PRACTICES RELATING TO ILLEGAL TAX PROTESTERS. WITH ME TODAY ARE PHIL COATES, ASSISTANT COMMISSIONER (COMPLIANCE), AL WINBORNE, ASSISTANT COMMISSIONER (EMPLOYEE PLANS AND EXEMPT ORGANIZATIONS), AND LESTER STEIN, ASSISTANT TO THE CHIEF COUNSEL.

LET ME BEGIN BY RECOGNIZING -- AND I BELIEVE THE SUBCOMMITTEE SHARES THIS VIEW -- THAT THE VAST MAJORITY OF TAXPAYERS DO VOLUNTARILY COMPLY WITH OUR TAX LAWS AND REGULATIONS. UNFORTUNATELY, THE PROTESTER MOVEMENT MUST BE GIVEN A LEVEL OF IMPORTANCE BY THE SERVICE WHICH IS GREATER THAN THE NUMBER OF PROTESTERS WE HAVE IDENTIFIED WOULD SEEM TO WARRANT. WHILE I AM CERTAINLY CONCERNED WITH CORRECTING THE ACTIONS OF INDIVIDUAL PROTESTERS IN THE CONTEXT OF THEIR OWN PARTICULAR TAX CIRCUMSTANCES, THE CORE PROBLEM WE FACE IS THE POTENTIAL FOR FRUSTRATIONS WITHIN THE TAX SYSTEM.

I SHOULD ADD IMMEDIATELY THAT THE IRS DIFFERENTIATES BETWEEN LEGAL AND ILLEGAL TAX PROTESTERS. ALL CITIZENS HAVE THE RIGHT TO EXPRESS CRITICISM OF THE TAX SYSTEM AND GOVERNMENT POLICIES RELATED TO IT, AS WELL AS TO JOIN GROUPS WHICH EXPRESS SUCH CRITICISMS. NOTHING THE SERVICE HAS DONE OR IS DOING IS DIRECTED AT SUPPRESSING THIS DISSENT. HOWEVER, ONCE AN INDIVIDUAL MOVES FROM EXPRESSING DISSATISFACTION TO ACTUALLY EMPLOYING SCHEMES WITH THE INTENTION OF EVADING TAXES, THE SERVICE HAS AN OBLIGATION TO BECOME INVOLVED IN ORDER TO PROTECT THE GOVERNMENT'S REVENUE BASE AND TO PRESERVE THE TAX SYSTEM.

THE EFFORTS OF THE SERVICE TO ASSESS AND COLLECT TAXES FROM THESE INDIVIDUALS HAVE NOT BEEN EASY. WE HAVE BEEN TOLD BY SOME THAT OUR EFFORTS HAVE BEEN INSUFFICIENT; THAT WE SHOULD BE MORE AGGRESSIVE. OTHERS HAVE CHARGED THAT OUR EFFORTS AMOUNT TO HARASSMENT AND ARE VIOLATIONS OF INDIVIDUAL RIGHTS. THESE CONTRADICTORY AND CONFLICTING CHARGES ARE MADE MORE DIFFICULT BY THE PROHIBITION IN SECTION 6103 ON PROVIDING INFORMATION ABOUT OUR DEALINGS WITH TAXPAYERS. THUS WHEN WE ARE ACCUSED OF NOT PROSECUTING A PROTESTER THAT CLAIMS NOT TO BE PAYING TAXES, WE CANNOT DIVULGE (WITHOUT APPROPRIATE CONGRESSIONAL APPROVAL) WHETHER OR NOT HE OR SHE HAS ACTUALLY PAID TAXES OR THE STATUS OF ANY ONGOING INVESTIGATION. WHEN WE ARE CHARGED WITH HARASSMENT, AS IN THE RECENT ARTICLE IN PARADE MAGAZINE, WE ALSO ARE PREVENTED FROM RESPONDING EVEN THOUGH, AS IN THE CASE OF THE INDIVIDUAL ON THE

COVER OF THAT ISSUE, THERE IS A SUBSEQUENT CRIMINAL INDICTMENT FOR TAX VIOLATIONS.

IN OUR MARCH 1979 "REPORT ON THE STUDY OF ILLEGAL TAX PROTESTER ACTIVITY", TEN CATEGORIES OR SCHEMES OF ILLEGAL TAX PROTEST ACTIVITY WERE NOTED. A LIST OF BOTH PAST AND PRESENT PROTESTER CATEGORIES IS INCLUDED HERE AS ATTACHMENT I. AS YOU WILL NOTICE FROM THE LISTING, THERE HAS BEEN ALMOST NO CHANGE IN THE GENERAL CATEGORIES OR SCHEMES OF PROTESTS OVER THE PAST TWO YEARS. RECENTLY, HOWEVER, WE HAVE BEGUN TO NOTICE TWO NEW VARIATIONS ON EXISTING SCHEMES. FOR EXAMPLE, A NEW TWIST TO THE "PROTEST ADJUSTMENT" SCHEME IS BEGINNING TO SURFACE. SERVICE CENTERS HAVE BEEN RECEIVING WHAT APPEAR, AT FIRST, TO BE LEGITIMATE FORMS 1040. UPON CLOSER SCRUTINY, HOWEVER, THE FORMS ARE FOUND TO BE ALTERED FORMS 1040 WITH CERTAIN LINE ITEMS CHANGED BY THE TAXPAYER. THE TAXPAYER WILL REPORT TOTAL WAGES FROM FORM W-2 ON THE CORRECT LINE, BUT REFLECT A LARGE DEDUCTION ON A LINE ADDED BY THE TAXPAYER TO FORM 1040 LABELED "NON-TAXABLE RECEIPTS" OR "FACTOR DISCOUNT EXPENSE" OR "EISINER VS. MACOMBER, 252 U.S. 189".

A RELATIVELY NEW CATEGORY OF TRUST SCHEME IS BEGINNING TO SURFACE ALSO. THIS IS KNOWN AS THE "FOREIGN TRUST ORGANIZATION (FTO)," AND IS SIMILAR TO THE FAMILY ESTATE TRUST SCHEME. WITH A FTO, AN AGENT IN A FOREIGN (TAX-HAVEN) COUNTRY CREATES A TRUST IN THAT COUNTRY AND NAMES THE TAXPAYER AS THE TRUSTEE. THE TAXPAYER TRANSFERS ASSETS AND INCOME-PRODUCING PROPERTY TO A NUMBER OF OTHER FOREIGN TRUSTS. THROUGH A SERIES OF SHAM TRANSACTIONS AMONG THE TRUSTS, WHICH ARE CONCEIVED ONLY FOR TAX PURPOSES, THE TAXPAYER ATTEMPTS TO EVADE THE INCOME TAX. WE HAVE ISSUED GUIDELINES AND INSTRUCTIONS FOR EXAMINING THIS SCHEME.

PERHAPS THE MOST VISIBLE TAX PROTESTER SCHEME IN RECENT MONTHS HAS BEEN THE FRAUDULENT WITHHOLDING STATEMENT OR W-4. THIS PROBLEM INCLUDES CASES WHERE THE INTENTIONAL EVASION OF PROPER WITHHOLDING IS DONE FOR PERSONAL FINANCIAL REASONS, BUT MANY W-4 ABUSES ARE PROTESTER RELATED.

GENERALLY, W-4 ABUSES INVOLVE EMPLOYEES CLAIMING EXCESSIVE ALLOWANCES OR TOTAL EXEMPTION FROM WITHHOLDING. IN EITHER CASE, THE EFFECT IS THAT THESE EMPLOYEES ESCAPE WITHHOLDING, MAKING FUNDS UNAVAILABLE TO THE GOVERNMENT. ADDITIONALLY, SINCE NO TAXES WERE WITHHELD, NO REFUND WILL BE DUE, AND MANY MAY NOT FILE TAX RETURNS AT ALL. CONSEQUENTLY, SOME ULTIMATELY DO NOT REPORT OR PAY ANY TAX, NOR DO THEY REPORT OTHER INCOME THEY MAY HAVE RECEIVED (E.G., INTEREST, RENTAL, ETC.).

THIS SITUATION REPRESENTS AN EROSION IN COMPLIANCE WHICH, IF PERMITTED TO CONTINUE, THREATENS NOT ONLY THE WITHHOLDING SYSTEM BUT ALSO THE REPORTING AND COLLECTION OF TAXES.

TO HELP ADDRESS THIS PROBLEM, AMENDMENTS TO THE EMPLOYMENT TAX REGULATIONS WERE ISSUED ON MARCH 11, 1980, AND TOOK EFFECT APRIL 1, 1980. THESE AMENDMENTS REQUIRED EMPLOYERS TO SUBMIT QUARTERLY TO THE IRS COPIES OF ALL THEIR EMPLOYEES' W-4'S CLAIMING TEN OR MORE WITHHOLDING ALLOWANCES, OR CLAIMING EXEMPTION FROM WITHHOLDING IF THE WAGES USUALLY EXCEED $200 A WEEK.

WITH THESE REGULATIONS IN PLACE, THE IRS' QUESTIONABLE FORM W-4 PROGRAM BECAME OPERATIONAL ON JULY 31, 1980, WHEN EMPLOYERS BEGAN SUBMITTING W-4'S TO IRS FOR THE SECOND CALENDAR QUARTER OF 1980. BASED ON THESE SUBMISSIONS, IRS DETERMINED IF THE WITHHOLDING STATUS WAS DEEMED "CORRECT". IF NOT, WE NOTIFIED THE EMPLOYER TO DISREGARD THE FILED W-4, AND WITHHOLD AS IF THE EMPLOYEE WERE SINGLE WITHOUT ANY WITHHOLDING ALLOWANCES, UNTIL A NEW W-4 WAS FILED BY THE EMPLOYEE. IF THE NEXT W-4 ALSO MET THE CONDITIONS NOTED ABOVE, IT TOO HAD TO BE SUBMITTED TO IRS, AND THE EMPLOYER HAD TO WITHHOLD BASED ON IT UNTIL NOTIFIED OTHERWISE BY THE SERVICE.

BUT THESE STEPS DID NOT COMPLETELY SOLVE THE W-4 ABUSE PROBLEM. A DEFICIENCY IN THE 1980 REGULATIONS ALLOWED THE TAXPAYER TO "DRAG OUT" THE W-4 FILING PROCESS BY CLAIMING 99 EXEMPTIONS, THEN 98, THEN 97, AND SO ON, THEREBY CONTINUING TO EFFECTIVELY ELIMINATE WITHHOLDING.

CONSEQUENTLY, TEMPORARY AND NEW PROPOSED REGULATIONS WERE PUBLISHED IN THE FEDERAL REGISTER ON MARCH 19, 1981. THESE REGULATIONS PERMIT THE IRS TO MAKE A SINGLE RULING ON THE NUMBER OF EXEMPTIONS TO WHICH A WORKER IS ENTITLED, AND AN EMPLOYER IS BOUND BY THAT DETERMINATION REGARDLESS OF WHAT THE EMPLOYEE PLACES ON SUBSEQUENT W-4'S. THE ONLY EXCEPTION IS WHERE THE EMPLOYEE SUBSTANTIATES TO IRS' SATISFACTION THE VALIDITY OF CLAIMING A LARGER NUMBER OF EXEMPTIONS. WITHOUT QUESTION THIS CHANGE WILL HELP US REDUCE W-4 ABUSES.

HEARINGS WERE HELD ON THESE REGULATIONS BY THE IRS ON JUNE 2, 1981 AND 11 SPEAKERS TESTIFIED. A SPOKESMAN FOR THE NATIONAL SOCIETY OF PUBLIC ACCOUNTANTS REACTED FAVORABLY TO THEM BUT SEVERAL EMPLOYERS OBJECTED STRONGLY ON THE GROUNDS OF INCREASED PAPERWORK AND POTENTIAL HOSTILITY BY EMPLOYEES. THESE COMMENTS AS WELL AS THE WRITTEN COMMENTS WE HAVE RECEIVED WILL BE CAREFULLY CONSIDERED BEFORE FINAL REGULATIONS ARE ISSUED.

ANOTHER PROBLEM THAT HAS EXISTED IS THE TIME LAPSE FROM THE FILING OF THE W-4'S WITH THE SERVICE CENTER AND THE TIME THEY ARE PROCESSED. TO RESOLVE THIS WE CURRENTLY ARE TAKING STEPS TO PROCESS W-4'S ON A MORE FREQUENT BASIS RATHER THAN QUARTERLY.

AS YOU KNOW, OUR 1979 TAX PROTESTER REPORT MADE 8 FINDINGS, EACH WITH A NUMBER OF RELATED RECOMMENDATIONS (36 IN ALL). NEARLY ALL THOSE RECOMMENDATIONS EITHER HAVE BEEN IMPLEMENTED OR ARE BEING IMPLEMENTED NOW.

THERE ARE, HOWEVER, 3 AREAS WHERE RECOMMENDATIONS HAVE NOT BEEN IMPLEMENTED. FIRST, THE INFORMATION RETURNS PROGRAM (IRP), IS ONLY CAPABLE OF IDENTIFYING TAXPAYERS WHO UNDERREPORT INCOME OR FAIL TO FILE RETURNS. IT IS NOT DESIGNED TO IDENTIFY THOSE WHO ARE ILLEGAL TAX PROTESTERS OR TO OTHERWISE DISTINGUISH THEM. I WILL HAVE MORE TO SAY ABOUT IRP LATER. SECOND, WE HAVE NOT YET SUCCEEDED IN TOTALLY AUTOMATING OUR SYSTEMS FOR TRACKING AND REPORTING ILLEGAL TAX PROTESTERS, ALTHOUGH PORTIONS OF THESE SYSTEMS ARE IN PLACE. THIRD, WE HAVE DECIDED NOT TO PROPOSE LEGISLATION AT THIS TIME TO BETTER DEFINE A CHURCH AND IMPOSE FILING REQUIREMENTS ON ANY SUCH ORGANIZATION.

THE GENERAL FOCAL POINT FOR MATTERS INVOLVING ILLEGAL TAX PROTEST ACTIVITIES IS THE DIRECTOR OF OUR CRIMINAL INVESTIGATION DIVISION (CID). THE TAX PROTESTER PROGRAM RECEIVES TOP PRIORITY ATTENTION BY CID IN THE GENERAL ENFORCEMENT AREA. THIS HAS RESULTED IN SIGNIFICANT ACHIEVEMENT. DURING THE PAST 30 MONTHS, TO MARCH 31, 1981, CID HAS INITIATED 1,151 CRIMINAL INVESTIGATIONS OF ILLEGAL TAX PROTESTERS AND RECOMMEND PROSECUTION IN 548 CASES. DURING THE SAME PERIOD THERE WERE 141 TRIAL CONVICTIONS AND 124 GUILTY OR NOLO PLEAS. FIFTY-FIVE PERCENT OF THOSE CONVICTED AND SENTENCED RECEIVED PRISON TERMS THAT AVERAGED 12.1 MONTHS.

THE OVERALL PROCEDURES USED BY THE SERVICE TO DEAL WITH ILLEGAL TAX PROTESTERS DO NOT DIFFER SIGNIFICANTLY BY THE TYPE OF PROTEST SCHEME USED. BRIEFLY, PROTESTER CASES ARE HANDLED IN THE FOLLOWING MANNER:

1. THE INITIAL DETECTION OF ILLEGAL TAX PROTESTER-TYPE DOCUMENTS USUALLY IS MADE IN THE RETURNS PROCESSING AREA OF OUR SERVICE CENTERS, BY A "TEAM" UNDER THE CONTROL OF THE COMPLIANCE DIVISION OF THE SERVICE CENTER. THIS TEAM, WHICH RECEIVES SUSPECTED PROTESTER RETURNS AND DOCUMENTS FROM THE RETURNS PROCESSING AREA PRIOR TO PROCESSING, DETERMINES WHICH RETURNS/DOCUMENTS ARE CONSIDERED PART OF ILLEGAL TAX PROTESTER ACTIVITY. INDICATIONS OF PROTESTER-TYPE ACTIVITY INITIALLY DETECTED IN A DISTRICT OFFICE WILL BE REFERRED TO THE DISTRICT ILLEGAL TAX PROTESTER COORDINATOR. THESE MAY SUBSEQUENTLY BE REFERRED TO THE SERVICE CENTER FOR PROCESSING AS NOTED BELOW.
2. ONCE IDENTIFIED AS PROTESTER-TYPE RETURNS/DOCUMENTS, ALL SUCH RETURNS/DOCUMENTS ARE DETERMINED TO BE EITHER PROCESSABLE OR NON-PROCESSABLE.
   A. <u>NON-PROCESSABLE</u>: THESE HAVE PRIMARILY INCLUDED THE "BLANK FORMS 1040" AND THE "CONSTITUTIONAL" (ALSO BLANK FORMS) SCHEMES. IN THESE CASES, THE TAXPAYER IS NOTIFIED BY REGISTERED MAIL THAT THE RETURN IS NOT ACCEPTABLE. IF AN ACCEPTABLE RETURN

IS SUBSEQUENTLY RECEIVED WITHIN 30 DAYS, IT IS SENT BACK TO RETURNS PROCESSING FOR REGULAR PROCESSING. IF THERE IS NO REPLY OR ANOTHER PROTEST RETURN IS RECEIVED, THE RETURNS AND ANY RELATED PRIOR RETURNS OR COLLECTION ACTIVITY INFORMATION IS REFERRED TO THE CRIMINAL INVESTIGATION DIVISION OF THE DISTRICT WHERE THE TAXPAYER RESIDES. CASES ULTIMATELY FOUND TO BE LACKING PROSECUTION POTENTIAL ARE REFERRED TO THE DISTRICT COLLECTION AND EXAMINATION DIVISIONS FOR REVIEW AND FOLLOW-UP.

B. PROCESSABLE: THESE HAVE PRIMARILY INCLUDED RETURNS FOR THE OTHER TYPES OF SCHEMES, WHICH TYPICALLY REFLECT INCOME BUT CLAIM CLEARLY UNALLOWABLE DEDUCTIONS OR CREDITS FOR PROTEST REASONS, AND WHICH IDENTIFY THE ONISSION OF A PORTION OF THE INCOME OR TAX FOR PROTEST REASONS. IN THESE CASES, THE CHIEF OF THE CRIMINAL INVESTIGATION BRANCH AT THE SERVICE CENTER DETERMINES WHETHER THE RETURN HAS POTENTIAL FOR CRIMINAL ACTION. IF NOT, THE RETURNS ARE FORWARDED TO THE APPROPRIATE DIVISION (EXAMINATION OR COLLECTION) OF THE DISTRICT WHERE THE TAXPAYER RESIDES FOR REVIEW AND FOLLOW-UP.

3. EACH CONCERNED DIVISION IN THE DISTRICT (CRIMINAL INVESTIGATION, EXAMINATION, AND COLLECTION) HAS ESTABLISHED PROCEDURES FOR HANDLING THESE CASES. FOR EXAMPLE, IN THE CRIMINAL INVESTIGATION DIVISION, REFERRED RETURNS WILL BE EVALUATED WITHIN 15 WORKDAYS OF THEIR RECEIPT AND, IF SELECTED FOR INVESTIGATION, WILL BE DESIGNATED AS PRIORITY CASES. IN THE EXAMINATION DIVISION, REFERRED RETURNS WILL BE CONSIDERED PRIORITY CASES, AND AN EXAMINATION BEGUN WITHIN 90 CALENDAR DAYS OF THEIR RECEIPT.

WE ARE UNABLE TO RELIABLY ESTIMATE THE NUMBER OF TAX PROTESTERS OR THE AMOUNT OF UNREPORTED INCOME AND RELATED TAXES FOR ANY YEARS PRIOR TO 1978, WHICH WAS WHEN PROCEDURES WERE

FIRST ESTABLISHED AT OUR SERVICE CENTERS TO DETERMINE THE EXTENT OF THE PROBLEM. BEFORE THEN, WE HAD FOCUSED NATIONAL OFFICE ATTENTION ONLY ON INDIVIDUALS USING THE TAX SYSTEM TO PROTEST A SPECIFIC NATIONAL POLICY SUCH AS THE VIETNAM WAR OR WORLD WAR II. SINCE THEN, HOWEVER, WE HAVE MAINTAINED STATISTICS ON, AMONG OTHER THINGS, THE NUMBER OF RETURNS/DOCUMENTS IDENTIFIED AND THE NUMBER OF TAXPAYERS INVOLVED IN ILLEGAL SCHEMES. FOR EXAMPLE, DATA FOR THE YEARS 1978-1980 SHOWS THE FOLLOWING TRENDS:

	NATIONAL TOTALS		
	1978	1979	1980
NUMBER OF TAXPAYERS	7,661	13,601	20,786

THESE FIGURES DO NOT INCLUDE INDIVIDUALS WHO HAVE NOT FILED OR WHO HAVE STOPPED FILING TAX RETURNS NOR DO THEY INCLUDE THE FRAUDULENT W-4'S. WE BELIEVE OUR EXPERIENCE WITH THE PROGRAM IS NOT SUFFICIENT TO SPECULATE ON HOW THESE FIGURES MIGHT LOOK IN 1985.

I WOULD LIKE TO TURN NOW TO SOME RECENT DEVELOPMENTS IN THE INFORMATION RETURNS PROGRAM (IRP) WHICH MAY INTEREST YOU AND THE MEMBERS OF THE SUBCOMMITTEE. AS I SAID EARLIER, THE INFORMATION RETURNS PROGRAM ITSELF DOES NOT SPECIFICALLY IDENTIFY TAX PROTESTERS BY MATCHING INFORMATION PROVIDED BY PAYERS WITH TAX RETURN DATA; INSTEAD IT IDENTIFIES TAXPAYERS WHO UNDERREPORT INCOME OR FAIL TO FILE THEIR TAX RETURNS. SUBSEQUENT INQUIRY MAY IDENTIFY THE INDIVIDUAL INVOLVED AS TAX PROTESTERS AND THESE CASES ARE THEN REFERRED TO CRIMINAL INVESTIGATION FOR RESOLUTION.

COMPUTER MATCHING OF INFORMATION IS A RELATIVELY INEXPENSIVE AND COST EFFECTIVE METHOD OF VERIFYING INCOME REPORTING BY A LARGE SEGMENT OF THE POPULATION. TO THE EXTENT WE RECEIVE INFORMATION RETURNS, IT IS A SIGNIFICANT TECHNIQUE IN OUR EFFORTS TO IDENTIFY SUBTERRANEAN TYPE INCOME. FOR TAX YEAR 1978, IRS RECEIVED AN ESTIMATED 500 MILLION INFORMATION RETURNS WITH 88 PERCENT OF THOSE FILED ON MAGNETIC MEDIA. WE WERE ABLE

TO USE 77 PERCENT OF THE INFORMATION REPORTED TO MATCH AGAINST THE MORE THAN 90 MILLION INDIVIDUAL INCOME TAX RETURNS RECEIVED FOR THAT YEAR. FOR 1976, WHICH IS THE LATEST YEAR FOR WHICH RESULTS ARE COMPLETE, WE WERE ONLY ABLE TO USE ABOUT 47% OF THE INFORMATION REPORTED, BUT IRP YIELDED $392 MILLION IN ADDITIONAL ASSESSMENTS AND RESULTED IN $188 MILLION IN REFUNDS.

THIS YEAR WE EXPECT TO FOLLOW UP ON 2.1 MILLION UNDERREPORTER CASES AND ABOUT 1.5 MILLION NONFILER CASES. ADDITIONAL ASSESSMENTS ARE ESTIMATED AT $457 MILLION AND REFUNDS OF $146 MILLION AT A COST OF ABOUT $65 MILLION.

WE ARE PROCESSING 100 PERCENT OF DOCUMENTS RECEIVED ON MAGNETIC MEDIA AND A 25 PERCENT SAMPLE OF PAPER INFORMATION RETURNS. IRS RECEIVED 88 PERCENT OF THE INFORMATION RETURNS ON MAGNETIC MEDIA, INCLUDING 100 PERCENT OF WAGE INFORMATION FROM THE SOCIAL SECURITY ADMINISTRATION AND 81 PERCENT OF NONWAGE INFORMATION RETURNS, SUCH AS INTEREST AND DIVIDENDS FROM THE PRIVATE SECTOR.

IRP IS BECOMING INCREASINGLY MORE IMPORTANT IN PLANNING OUR EXAMINATION AND COLLECTION ACTIVITIES. FOR EXAMPLE, INFORMATION RETURNS ARE AVAILABLE (THROUGH AN "ACCELERATED IRP" PROCESS) TO REVENUE AGENTS, TAX AUDITORS, AND REVENUE OFFICERS AS THEY EXAMINE INCOME TAX RETURNS OR INVESTIGATE NONFILER SITUATIONS INCLUDING TAX PROTESTER CASES.

EXACT COSTS AND DOLLAR BENEFITS OF OUR TAX PROTESTER PROGRAMS CANNOT BE ISOLATED IN DETAIL BECAUSE OUR INFORMATION SYSTEMS DO NOT USUALLY TRACK COLLECTIONS BY TYPE OF ISSUE. HOWEVER, THE DATA THAT IS AVAILABLE SEEMS TO INDICATE THAT RESULTS OF EXAMINATIONS OF TAX PROTESTER CASES ARE IN THE SAME RANGE AS RESULTS OF REGULAR INDIVIDUAL INCOME TAX EXAMINATIONS. FOR EXAMPLE, IN FY 1980, THERE WAS $1,522,573 IN RECOMMENDED TAX AND PENALTIES RELATED TO TAX PROTESTER CASES, A "RETURN" OF $276 PER STAFF HOUR COMPARED TO $207 PER STAFF HOUR ON REGULAR INDIVIDUAL INCOME TAX EXAMINATIONS. FOR FY 1981 THROUGH APRIL 24, THE COMPARABLE FIGURES ARE $6,335,174, WITH A "RETURN" OF $329 VS. $260.

I WOULD LIKE TO CAUTION YOU THAT, DESPITE THESE FIGURES, OUR OPERATING EXPERIENCE SUGGESTS THAT PROCESSING TAX PROTESTER CASES IS MUCH MORE DIFFICULT THAN OTHER CASES (ALTHOUGH NO SPECIFIC DATA IS AVAILABLE). TAX PROTESTERS OFTEN HAVE STRONGLY RESISTED OUR EFFORTS TO OBTAIN INFORMATION THROUGH:

1. FREQUENT CANCELLATION AND RESCHEDULING OF INTERVIEW APPOINTMENTS;
2. FAILURE TO KEEP SCHEDULED APPOINTMENTS;
3. DEMANDING THAT ALL QUESTIONS OR COMMUNICATIONS BE MADE IN WRITING; AND,
4. WITHHOLDING OF RECORDS THAT WERE SPECIFICALLY IDENTIFIED AND REQUESTED BY THE EXAMINERS THUS NECESSITATING THE ISSUANCE AND COURT ENFORCEMENT OF SUMMONSES TO OBTAIN ANY TAXPAYER AND THIRD PARTY RECORDS.

THIS RESISTANCE CAN ALSO TAKE THE FORM OF HARASSMENT AND THREATS AGAINST SPECIFIC SERVICE EMPLOYEES.

FOR EXAMPLE, EMPLOYEES HAVE BEEN HARASSED BY TELEPHONE, RECEIVING ABUSIVE OR OBSCENE CALLS AT HOME AT ALL HOURS. THE MAILS HAVE SIMILARLY BEEN USED FOR HARASSMENT. UNWANTED MERCHANDISE MAY ALSO BE ORDERED FOR DELIVERY TO THE EMPLOYEE AT HOME AND A REQUEST MADE THAT THE EMPLOYEE BE BILLED. PORNOGRAPHIC MATERIALS HAVE BEEN ORDERED AS WELL AS EVERY CONCEIVABLE FORM OF MERCHANDISE INCLUDING SUBSCRIPTIONS TO MAGAZINES, RECORD AND BOOK CLUBS, ETC. HARASSMENT HAS EVEN CARRIED OVER TO EMPLOYERS WHO ARE TRYING TO CARRY OUT OUR NEW W-4 REGULATIONS. IN ONE RECENT CASE AN EMPLOYER REPRESENTATIVE PASSING OUT NOTICES EXPLAINING THE W-4 REQUIREMENTS WAS TOLD HE MIGHT "DISAPPEAR" IF HE CONTINUED.

CONSEQUENTLY, REACHING A SETTLEMENT ON TAX DUE AND ACTUALLY COLLECTING SUCH TAX CAN BE A MUCH MORE DRAWN OUT PROCESS THAN WITH OTHER TAXPAYERS, AND THEREFORE MORE COSTLY. NOTWITHSTANDING THIS ADDITIONAL COST, THE DETRIMENT THE TAX PROTESTER MOVEMENT POSES TO TAX ADMINISTRATION OBJECTIVES DEMANDS VIGOROUS CONTINUATION OF OUR ACTIVITIES IN THIS AREA.

IN THIS LIGHT, OUR PROGRAMS TO COMBAT ILLEGAL TAX PROTESTERS ARE SEEN AS ENFORCEMENT-ORIENTED MORE THAN REVENUE-ORIENTED, AND CRIMINAL PROSECUTION MAY BE RECOMMENDED EVEN WHERE THE TAX LIABILITY BY NORMAL STANDARDS IS MINIMAL. IN THOSE CASES WHERE FLAGRANT OR REPETITIOUS CONDUCT IS EVIDENT, CRIMINAL SANCTIONS BECOME WARRANTED. WE OFTEN MUST ACT REGARDLESS OF THE AD HOC YIELD WHERE AN ILLEGAL TAX PROTESTER USES A SCHEME KNOWN TO BE IN FREQUENT USE BY OTHER TAX PROTESTERS, AND WIDESPREAD USE COULD ADVERSELY AFFECT VOLUNTARY COMPLIANCE.

ANOTHER MATTER ABOUT WHICH YOU INQUIRED IN YOUR LETTER CONCERNS IRS' USE OF SEARCH AND SEIZURE POWERS IN THE ILLEGAL TAX PROTESTERS PROGRAM. SECTION 7608 OF THE INTERNAL REVENUE CODE OF 1954, AS AMENDED, AUTHORIZES CRIMINAL INVESTIGATION PERSONNEL (IN OUR CRIMINAL INVESTIGATION AND INSPECTION FUNCTIONS) TO SERVE SEARCH WARRANTS WHEN SUPPORTED BY PROBABLE CAUSE OF CRIMINAL ACTIVITY AND AUTHORIZED BY A COURT. THIS AUTHORIZATION IS CONTAINED IN THE IR MANUAL IN SECTION 9451.1; SUBSEQUENT SECTIONS DETAIL THE PROCEDURES TO BE FOLLOWED IN OBTAINING AND EXECUTING SEARCH WARRANTS. HOWEVER, WE DO NOT HAVE SEPARATE SEARCH STATISTICS ON TAX PROTESTERS.

WITH RESPECT TO SEIZURES, WE DO NOT DIFFERENTIATE ILLEGAL TAX PROTESTERS FROM OTHER DELINQUENT TAXPAYERS IN OUR COLLECTION ACTIVITY; IN OTHER WORDS, THE DECISION TO USE SEIZURE AUTHORITY IS NOT BASED ON THE REASON A TAXPAYER IS DELINQUENT. INSTEAD, IT IS BASED ON A TAXPAYER'S ABILITY AND WILLINGNESS TO SATISFY THE LIABILITY. SINCE AS I SAID, WE DO NOT TREAT ILLEGAL TAX PROTESTERS UNIQUELY OR DIFFERENTLY, WE DO NOT HAVE SEPARATE SEIZURE STATISTICS ON THEM EITHER.

IN CLOSING, LET ME REEMPHASIZE MY CONCERN OVER THE EFFECTS THE TAX PROTESTEP "MOVEMENT" MAY HAVE ON TAX ADMINISTRATION. AT THE PRESENT TIME, HOWEVER, WE CAN NOT SAY THAT THERE IS A DISCERNABLE RELATIONSHIP BETWEEN THE ILLEGAL TAX PROTESTER "MOVEMENT" AND OUR ABILITY TO MAINTAIN AN EFFECTIVE VOLUNTARY COMPLIANCE SYSTEM.

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IN TERMS OF ABSOLUTE NUMBERS THE ILLEGAL TAX PROTESTERS THAT WE HAVE IDENTIFIED ARE NOT A SERIOUS PROBLEM. FOR EXAMPLE, IN 1980 SOME 143,446,000 TAX RETURNS AND SUPPLEMENTAL DOCUMENTS OF ALL TYPES WERE FILED WITH THE IRS, YET ONLY 18,225 RETURNS OR DOCUMENTS WERE IDENTIFIED AS PROTEST RETURNS. I THINK THIS REINFORCES MY ASSERTION THAT THE VAST MAJORITY OF TAXPAYERS ARE HONEST, AND DO NOT ATTEMPT TO THWART THE TAX ADMINISTRATION SYSTEM.

BUT AT THE SAME TIME IT IS POSSIBLE FOR PUBLIC CONFIDENCE IN THE GOVERNMENT'S ABILITY TO FAIRLY AND FIRMLY ADMINISTER THE TAX LAWS TO BE JEOPARDIZED IF THE ILLEGAL TAX PROTESTER "MOVEMENT" CONTINUES TO GROW. FOR THIS REASON, WE THINK IT IS ESSENTIAL, DESPITE THE COST AND EFFORT, TO ENFORCE THE LAWS VIOLATED BY THESE INDIVIDUALS, AND TO DEMONSTRATE TO THE PUBLIC THAT THESE TACTICS SHOULD NOT BE ATTEMPTED BY OTHERS.

MR CHAIRMAN, THIS CONCLUDES MY PREPARED REMARKS. MY ASSOCIATES AND I WILL BE PLEASED TO TRY AND ANSWER ANY QUESTIONS YOU OR THE MEMBERS MAY HAVE.

EVOLUTION OF CATEGORIES/SCHEMES OF ILLEGAL TAX PROTESTS

MS 9G-93 (1-10-79)	March 1979 Report	Illegal Tax Protestor Summary (No-CP:CI-62) As Of December 31, 1980
1. Constitutional Basis	1. Constitutional Basis	1. Constitutional Basis
2. Fair Market Value	2. Fair Market Value	2. Fair Market Value
3. Gold/Silver Standard	3. Gold/Silver Standard	3. Gold/Silver Standard
4. Blank Form 1040/1040A	4. Blank Form 1040	4. Blank Form 1040 (1040A)
5. NonPayment Protest	5. NonPayment Protest	5. NonPayment Protest
6. Protest Adjustment	6. Protest Adjustment	6. Protest Adjustment
7. Mail Order Ministries	7. Vows of Poverty [Mail Order Ministries]	7. Vows of Poverty [Mail Order Ministries]
8. W-4 (Excessive Overstatement of Allowances)	8. W-4/W-4E (Excessive Overstatement of Exemptions or Claim of Tax Exempt Status)	8. W-4/W-4E
9. Family Estate Trust	9. Family Estate Trust	9. Family Estate Trust
10. Protestor Letters & Cards	10. Other (Misc. cards, letters, etc.)	10. Other
11. Forms 843 & Amended Returns Individuals file for a total refund on all taxes paid in prior years, even though returns were not filed for these years.		

CONSTRUCTIVE COMMENTS AND TAXPAYERS' RIGHTS

Mr. MCCARVILLE. And it concerns the two specific meetings.

Senator DECONCINI. OK. I share your concern. I think we have witnessed the Bureau of Alcohol, Tobacco and Firearms in that same type of operation, and I deplore that. I'm very interested in this memo and intend to take it up with the Commissioner if not today, later. I think these are the worst things that can happen to a governmental agency when they infringe on the professional or personal rights of people.

They've got a job to do. We understand it, and I disagree with a lot of it, and you do, and so do probably most people here. But when they have to start surreptitious activities in order to survey legitimate conferences and professional seminars, it really disturbs me because next they'll be surveying your telephone lines, and then God knows what, in trying to find out things.

Your partner and associate was helpful to us, as you have been. And I want to say this from the standpoint of a representative from Arizona. I thank you for coming forward with your constructive comments and exercising your first amendment right. I would be most upset if any actions were taken by the Internal Revenue Service or any agency of the government as a result of anyone testifying here today. So far I've seen nothing that is objectionable or illegal or even infringes on anything other than the rights of citizens to protest and to express themselves. Thank you very much.

Mr. MCCARVILLE. Thank you very much, Senator.

STATEMENT OF YALE GOLDBERG, ATTORNEY, LEWIS AND ROCA

FAIRNESS

Senator DECONCINI. Our next witness will be Yale Goldberg. Mr. Goldberg, are you here? If time permits, we have one witness after Mr. Goldberg. I might ask if time permits, you might come back and respond to some of these, Mr. Egger, at least in a general sense.

Mr. EGGER. Yes, sir.

Mr. GOLDBERG. Mr. Chairman, my name is Yale Goldberg, and I'm an attorney with the Phoenix law firm of Lewis and Roca. Prior to joining Lewis and Roca, I was an attorney with the Tax Division of the Department of Justice working in Washington, D.C. I am appearing on my own behalf and wish to convey to this committee a simple and concise message.

The message I wish to convey is the importance of fairness and the appearance of fairness on the part of IRS personnel. Our system of taxation is unique in many ways as a self-assessment system. That is, our tax system largely depends upon the voluntary compliance of taxpayer citizens of our country. It is the responsibility to prepare and file a correct return. The underlying sense of fairness and perceived fairness can be demonstrated by considering the following figures: In 1980, approximately 93,500,000 individual tax returns were filed. And of these, 1,640,000 were audited. Statistically, approximately 1¾ of all individual income tax returns that were filed were audited, and over 98 percent were not. I think that it's critical that the 98 percent of the public that will not be audit-

ed believe that our tax system is fair. In light of the proposed budgetary cuts planned for 1982 and 1983, it seems to me unlikely that the percentage of taxpayers that will be audited in those years will increase significantly. I think that our tax system is perceived as unfair for a number of reasons. And I believe that the solutions here aren't going to be simple.

ARBITRARY ACTION

Our tax system is perceived as unfair because it's enormously complex. The many non-tax objectives that exist in Internal Revenue adds to that problem. I believe that our own proposal to go to a flat tax rate will be helpful in this area. However, I think that the worse type of perceived unfairness comes as a result of any arbitrary action taken by an IRS agent or IRS collection officer who is totally indifferent toward the notion of fairness. This is the type of situation that saddens me the most.

Whenever an arbitrary action is taken, not only do we get an incorrect result in that particular situation, but worse, there's a lessening of confidence in the tax system, which has a direct effect of eroding voluntary compliance. You've heard today in Phoenix and Wednesday in Tucson of several IRS horror stories. These situations, I believe, are double-barreled problems for the IRS because not only is there an injustice in the short run, but moreover, there's an erosion of taxpayer confidence in the system which really can't be measured in dollars. I don't know that it would be useful to tell you the whole horror stories that I have been exposed to. If anything, I'm inclined to take the opportunity to remind you and the Commissioner that there are many dedicated IRS people here in Phoenix who are committed to fairness and the importance of fairness.

INSTILLING THE IMPORTANCE OF FAIRNESS

In closing, however, I just want to reiterate that so long as we do have a self-assessment system, much more needs to be done to instill in the minds of the IRS personnel the importance of fairness. Any arbitrary acts which might work to produce a little revenue in the short run is going to have a devastating effect in the long run. Thank you.

Senator DECONCINI. Mr. Goldberg, were you with the Internal Revenue Service?

Mr. GOLDBERG. No, I was with the Department of Justice.

Senator DECONCINI. The Department of Justice?

Mr. GOLDBERG. And they have the responsibility for defending the IRS in district court actions and court of appeal actions.

TRAINING OF AGENTS

Senator DECONCINI. What was your assessment of the agents' training and professionalism, at least when you were in the Department? Did you get the worst of the cases?

Mr. GOLDBERG. No, I felt that the IRS agents were typically well trained. In most instances, we were dealing with the revenue agents as opposed to revenue officers. However, most of our contact

was with the chief counsel's office of the IRS. And at that time when the Justice Department would advise them of the litigating hazards, I think they were receptive to them and willing to back off.

I think that the problem is that the agent level where there isn't a consideration of some of the litigating hazards and inequities in the case were where the unfairness comes up.

Senator DECONCINI. Do you practice tax law now?

Mr. GOLDBERG. I do.

Senator DECONCINI. With your law firm? Is it your experience, or has your assessment of that training or lack of training of Federal agents, now that you're in court with them, improved or——

Mr. GOLDBERG. I still feel that on a regular basis, we're dealing with well-trained individuals. It's just that when I think of the shortsightedness of any arbitrary act or any arbitrary person within the IRS, it just reminds me that there's a problem of the short run and the long run and a reminder that they're just totally unaware of the impact in the long run and of the fact that this unfairness is going to be told to the friends and advisers of the taxpayers it's affected, and it's much worse of a problem.

CHANGES IN THE LAW AND COURT INTERPRETATIONS

Senator DECONCINI. I don't know if you were here when Mr. Cheifitz was testifying regarding his own belief that the fact that Congress changes the laws so often has a great deal to do with the lack of credibility that the citizens have with this self-assessment progressive income tax we have . This is the first time I'd really thought about that being the problem. I've often thought it was that we not only pass too many laws, but there are so many interpretations by the courts and by professionals. What's your opinion on that subject?

Mr. GOLDBERG. I think that the changes cause the law to be more complex. So I think that this perception of unfairness is as a result of many factors, the complexity of the law, part of which is due to the frequent changes in the law. And it's unfortunate, but I think in the mind of many taxpayer citizens, they feel that they are not going to get a fair break, and as such, their self-assessment isn't going to be as correct as it might otherwise be.

Senator DECONCINI. And then, of course, there's ample publicity of those who do have legitimate use of the process and pay less taxes than someone else perceives they should pay. Thank you very much, Mr. Goldberg. We appreciate your time here this morning.

STATEMENT OF JULIUS RUBENSTEIN, CERTIFIED PUBLIC ACCOUNTANT

COLLECTION, OFFICE AUDIT, AND FIELD AUDIT DIVISIONS

Senator DECONCINI. Our last witness this morning will be Mr. Julius Rubenstein, of the Phoenix Tax Workshop.

Mr. RUBENSTEIN. Thank you, Senator.

Senator DECONCINI. Thank you, Mr. Rubenstein. Pleased to have you here, sir.

Mr. RUBENSTEIN. My name is Julius Rubenstein. I'm a CPA in Arizona and several other States. But I've been practicing here

continuously since 1974, and I'm a partner in one of the larger firms. But I'm not coming here as a practitioner. I'm rather coming here representing the over 300 professional members in the Phoenix Tax Workshop with everybody, from some of the top-notch tax attorneys, down to CPA's and non-CPA's that are licensed to practice before the Tax Department, and even public accountants.

So we have pretty well a complete gamut. And a lot of the ideas I'm coming up with came from some of the members. Some are refined and some, there just wasn't enough time. In fact, I better take my watch off. My attitude—originally——

Senator DECONCINI. We have 15 minutes for your testimony.

Mr. RUBENSTEIN. OK. I want to look at it though. Originally, I was thinking about maybe picking on the law because really in my opinion, I think the law is a horrible problem. But I decided this was really not the purpose of the meeting, so I decided to stick to the three main divisions of the IRS that we professionals deal with.

Even though there are five divisions, we usually only deal with the collection, the office audit or the field audit, and if you'll give me a minute on each one?

COLLECTION DIVISION

The Collection Division is really very similar to any professional collection agency. They operate that way. They've got the same type of personnel. They've got to be tough, and most horror stories come from there. I mean, the liens against widows, the auctions of the cars and the homes and property, the attachments and so on. But I don't think it can be changed. I really, honestly don't think it can be changed. I mean, these are debts. When Commissioner Egger says there's over $20 billion of noncontested debt being owed to the Government, how can you change it? I mean, you've got to chase these people.

Senator DE CONCINI. You have to do what?

Mr. RUBENSTEIN. You've got to chase these people to collect it.

Senator DECONCINI. Chase them?

Mr. RUBENSTEIN. Now one revenue agent told me several years ago—and I had a very close, heart-to-heart talk to him. And I said, "Why are you so tough?" He wasn't tough to me, but I knew he was tough to the taxpayer. He said, "Julius, I've been with the Government now over 5 years. And I firmly believe that more than 50 percent of the taxpayers either lie to me or make promises that they don't intend to keep. How would you act?"

UNIFIED COLLECTION AGENCY FOR ENTIRE GOVERNMENT

He says, "That's the actual percentage I'm working under." So my suggestion is—my suggestion is that the entire Collection Division be taken away from the IRS, and it's doing nothing but harming the reputation of the IRS. I think that a new unified Collection Division for the Government be set up. And this unified Collection Division should have the responsibility of collecting all debts owed to the Government, whether it's from income taxes, excise taxes, student loans, VA loans or any other debt to the Government. And I feel that will do a lot toward taking away this horrible reputation that the IRS is getting. And people are really just making a living

at criticizing the IRS and holding seminars and telling people how to—for $20 they can become a minister in a church and not pay taxes and so on.

Let's take the Collection Division away from them, and it really has nothing to do with the operation of the IRS. And it's something that we have got to have. I would become very angry if somebody—if I loaned somebody $10,000 and he had a big party with it and then told me, "I don't have the money to pay you back," and I don't think the Government should act any differently.

OK. Now getting back to the office audits.

Senator DECONCINI. Would you create a new agency, or would you suggest using something that is in existence now under the Federal Government?

Mr. RUBENSTEIN. Well, whatever—you know the Federal Government a lot better than I do, Senator. But I believe it ought to be taken out of the IRS. I think when you're talking about student loans, you're not going to give it to the IRS. Whether you're talking about Veterans' Administration loans, whether you're talking about any kind of debt. People smuggling in jewelry and being caught and suddenly being——

Senator DECONCINI. It's a very interesting idea. It really is.

Mr. RUBENSTEIN. Just one unified collection agency for the Government.

OFFICE AUDIT

And the second item, with your permission, is the office audit. The office audit is a little bit of a peculiar division. The people are not really trained. A lot of them are—don't even know the law really. I mean, they just know a very small part of it. And their job is mostly to deal with itemized deductions such as charity, medical expenses, taxes, and interest. So first, let me give you the criticism, and then I'm going to give you what I think is a suggestion for improving it.

Criticism from our members are lack of competence of the law. Sometimes these—these auditors are petty. Most of the time these auditors do not have a concept of materiality. One of our members said just last week he spent 3 hours on an item that ended up affecting the taxpayer between $15 and $20 in taxes.

Here's another complaint. Many times the responses from the office audit is slow and, of course, the accountant doesn't want to get in bad with the office audit, so he doesn't complain. However, if a professional becomes—if a professional adviser—if his response is slow, no call is made to the accountant. However, the case is arbitrarily closed. Everything is disallowed and a huge tax bill goes directly to the taxpayer embarrassing the accountant and making him lose the client.

LICENSING TAX PREPARERS

Now this was told to me by dozens of members. So I imagine it's—I'm not in that area in our office, but I imagine it's true. Now my suggestion for this is that the IRS should license certain preparers or bond them, do whatever you want to, where these preparers would have the authority to sign that they have seen all factual

items on the return such as—now we're just going to start with simple items—cash payments for interest, cash payments for charity, cash payments for medical expenses, cash payments for taxes. When I say cash, I mean, of course, checks, too.

And when the professionals sign this, the Government will guarantee the taxpayer that an insignificant percentage of those returns will be audited on those items. They will naturally have to audit a few just to see if—really to check up on the preparers, not on the taxpayers. But the advantage to the taxpayers of this system would be it would save them time and fees.

Senator DECONCINI. Well, let me ask you a question. If the preparer is bonded, certified, and approved, what makes you think that the person he is representing won't give him false information?

Mr. RUBENSTEIN. Oh, well, I'm talking about seeing the checks. In other words, right now the way our office prepares an income tax return, somebody will bring in a list or not even a list. They'll just say we gave so much to the church.

Senator DECONCINI. I understand.

Mr. RUBENSTEIN. OK. Now, this will save the office audit millions of hours because most of the time the office auditors just sit there adding up piles and piles of checks that have been brought to them. Nothing more. I've asked people that go to office audits——

TAXPAYER PREPARING HIS RETURN

Senator DECONCINI. You would still permit the individual citizen to prepare his own?

Mr. RUBENSTEIN. Oh, definitely. And he would have a little bit of a higher risk of audit. But that's perfectly all right. The advantage to the IRS, by the way, under this plan would be much greater than to the citizen. This is something that most people don't realize. An office audit that just checks a timy little part of your return for all intents and purposes, closes that return for future audit.

I have never seen a return opened again, even though by law, they have a right to. In other words, here's a businessman that makes $1 million in his business, and he gets a letter from Ogden saying, "Prove your $75,000 that you gave to charity." He sends in Xerox copies of these checks or whatever he has to, and that closes the year. The IRS will never question anything else. So I feel my system would not only help the taxpayers.

Senator DECONCINI. You mean they will not question anything else on that——

Mr. RUBENSTEIN. I have never seen it happen.

Senator DECONCINI. We had testimony just the day before yesterday quite the contrary; that they do keep opening them.

Mr. RUBENSTEIN. Well, if they find something. No; I'm talking about that particular year, Senator. Once the—you satisfy the office audit, an office audit is limited to just items usually like interest, charity, medical, taxes, and a few other miscellaneous items. Once you satisfy them, they do not go any further. They do not go into schedule C or your dividends or your tax shelters or anything else. They just close the return.

Senator DECONCINI. Well, haven't they theoretically already done that when they audit it or when they——

Mr. RUBENSTEIN. No; not to my knowledge.

Senator DECONCINI. I'll ask. Thank you.

FIELD AUDITORS

Mr. RUBENSTEIN. OK. The third item and probably the most important are the field auditors. I'm sure they do the bulk of the work and bring in the most money. They're the ones that are the best trained. They're the most competent. I think almost all of them are college graduates.

I disagree with some of my colleagues. I think they're very competent. There's evidence by the fact that so many of them are stolen by private industry. There's been a tremendous flow of agents in the last few years in the Phoenix area into public accounting firms and banks and other private industry because they are competent, but they're underpaid. And I think it behooves the Senate to do something about keeping them.

There's only two or three items I want to mention about them. One, they're only human. It's like my famous story that was told to me by the police officer. One of our clients is a very successful ex-police officer. And he said, "Julius, you know I would ride along many times in a good mood and maybe before a holiday, and I'd see a car do something wrong and I would intend to stop them and give them a warning." He says, "I'd be full of good feeling, and I'd stop the car, walk up to the window, and in 5 minutes, he would get me so angry that I would give him three tickets."

That could happen with any Internal Revenue agent. Because they just mirror the way they're treated. I act that way. You act that way. When somebody becomes abusive to you, calls you a Gestapo or whatever it is from the minute you walk in, I can't believe that they're going to be so good that they're going to say, "Well, we're going to turn the other cheek."

TAXPAYER COMPLIANCE MEASUREMENT PROGRAM

OK. The second item that I want to point out is I know the IRS feels that taxpayer compliance measurement program [TCMP] audits are very important. Those are audits that started, I would guess, 10 years ago. And they started out by picking 20,000 taxpayers around the country just by chance, and they made them check every single item on the return, every line, every name. At the very beginning, they were even making them bring in the birth certificate.

It isn't that bad now, but it is terribly bad. In other words, right now, we have a taxpayer—a TCMP audit going on in our office on a large business. And it's going to cost the client in time and in additional fees, probably $5,000. So I suggest if it is so important that the IRS have these TCMP audits, that first they make the law that they will never—because they're only doing it for their benefit. The purpose is not to raise additional revenue. It isn't a typical audit, and it is not in the law. It's something that they just made up to help their computers.

CONTROLLING THE NONAUDITED TAXPAYERS

I'd like to at least notify the public that no one person will ever have two TCMP audits within a lifetime. I believe that will make them feel a little better. And secondly, anybody that has a TCMP audit should get some sort of a tax credit for the following year for the additional time and professional fees that is paid for to help the Government in their computer program. By the way, the TCMP audits generate what is known as DIF scores up in the computer. The computer then uses the DIF scores to kick out what they think are income taxes that would generate additional revenue if they were audited. Well apparently, the DIF scores don't seem to work that well because some audit—some clients are audited every year or every other year, and some clients are never audited. We have clients that have been our clients for 20 and 30 years that are literally worth millions of dollars and have never been audited. What happens, I've checked around with dozens of other practitioners and the worst clients to control are those that have never been audited. Slowly, they start writing off the second car. Slowly, they start writing off the trip to Europe. Slowly, they start writing off the boat in LaJolla. And after a while, they feel it's coming to them. "I mean, my God, I've been doing this for 6 years, and nobody has ever questioned it. Why are you questioning it now?"

DIF SCORES

And so I feel the DIF scores are not as good as the IRS thinks they are. Maybe they ought to have some system whereby they ought to combine the DIF scores with maybe the length of time somebody has not been audited and make sure that everybody over a certain net worth or something is audited every, I don't know 5, 6, 7, or 8 years, or spread it around a little more evenly.

As you heard in Tucson, there was one man that was audited 9 time in 10 years, and half the time he got little refunds. Well, that was either done by picking on him, which I don't want to accuse the IRS of, or his return was picked by the DIF scores. Well then, it doesn't work.

TCMP, DIF, NO CHANGE, AND EXAMINATIONS

Senator DECONCINI. I have received some material from the Internal Revenue Service on TCMP examinations, value of DIF system, "no change" examinations, and utilization of examination resources. The statements will be inserted in the record at this point.

[The material follows:]

TCMP EXAMINATIONS

It was recently decided to exclude from future Taxpayer Compliance Measurement Program (TCMP) those taxpayers that were selected in prior TCMP surveys. This change will be effective for the next individual survey (Phase III, Cycle 8), which is scheduled to be implemented October 1, 1983. These exclusions will be accomplished during the selection process at the National Computer Center (NCC).

We have also initiated new procedures in situations for taxpayers selected for TCMP when they received a "no change" in one of the two prior years. In these situations, we will limit the scope of the TCMP examination.

It is true that TCMP audits require a detailed review of the return. The Code permits the Service to audit every return filed and to verify each item therein. We realize that examination of returns may cause some inconvenience to taxpayers. Also, a certain amount of cost is usually involved in the examination of most tax returns. There is no provision under the law to reimburse a taxpayer for the expenses incurred in a TCMP examination. However, tax counsel and assistance expenses incurred in any Internal Revenue audit are deductible in the year they are paid. Thus, a taxpayer can deduct the expense and lower his tax for that year.

The Service attempts to expedite all examinations and with the taxpayer's cooperation and assistance, a TCMP examination will be conducted to minimize the time and cost to the taxpayer.

VALUE OF THE DIF SYSTEM

The Discriminant Function (DIF) System is the most effective method known for selecting returns for examination. Both the General Accounting Office and the National Bureau of Standards have studied the DIF System and found it to be very effective. The IRS conducts research to improve selection systems on a continuing basis, and will continue to do so. However, since—given current IRS resources—there are more productive returns to examine than can be examined, no system is likely to solve the problem that some returns which should be examined are not.

"NO CHANGE" EXAMINATIONS

The Internal Revenue Manual contains provisions to avoid repetitive no change examinations. During the classification process, if the screener/classifier determines that either of the two prior years was examined for the same issues present in the current year, and that examination resulted in a no change, then the return will not normally be selected for examination.

However, if the return is selected for examination and the taxpayer responds to our initial inquiry stating that he/she was examined for the same issues in either of the two prior years and had "no change", the examination will normally be terminated.

These procedures should preclude a taxpayer from being continually examined for the same no change issues.

UTILIZATION OF EXAMINATION RESOURCES

Examination allocates resources to audit those returns most in need of examination. This allocation necessarily includes identified areas of noncompliance, such as the tax shelter and tax protester returns where the revenues flowing into Treasury are in excess of the average deficiency resulting from an examination in the general program. These areas also require examination because of their highly abusive nature. We are constantly aware of our limited resources and must allocate first to those programs which exhibit a high degree of noncompliance. While we have emphasized abusive tax shelters in recent years because the problem has grown, we nevertheless have not abandoned our regular examination programs. For example, 68 percent of our nationwide individual examinations for fiscal year 1981 were identified through our normal computer system. For Phoenix District, 66 percent of individual examinations were identified through the computer system.

TAX SHELTERS

Mr. RUBENSTEIN. The third and the last item I want to point out on field auditors is many times because of all the publicity and all the salesmen selling tax shelters, a bigger and bigger percentage of the clientele are buying tax shelters. They don't understand them. All they understand is you invest $10,000, and you can save $25,000 in taxes that year. And they say, "Is it perfectly legal?" And the salesman says, "It's perfectly legal. We have a letter from Conan in Washington, D.C. saying that it is legal," or some other prestigious law firm, and more and more taxpayers are in this.

Well, when these returns come up for audit and the agent discovers that there's a tax shelter in it, we would like to settle everything else on the return and let that tax shelter go because it usu-

ally takes 2 or 3 years to settle a tax shelter because we don't have the figures. The figures are in New York or Philadelphia or so on. So we ask the agent to give us a limited consent.

LIMITED CONSENT

The first thing he does, he asks if we'll keep the statute of limitation open on that one item. Well, no, he wants it on the whole return. I said, "Why give it to them on the whole return? I'll give it to you on the one item. I want a limited consent." And at that point, he doesn't know what to do. For awhile there, we were getting them.

Now they're refusing to give them to them again. They seem to be "wallowing" back and forth on whether they should give us limited consents or not.

Senator DECONCINI. It wouldn't have any effect on the other parts of the return?

LIMITATION ON AUDITS

Mr. RUBENSTEIN. If it's been audited, why should it be left open? The law or the—their own rules are that a return can only be audited for 3 years unless it's fraudulent. We agree with that. But we don't want it kept open and open and open. And we actually have a case—I haven't seen it, but one of the other partners told me about it—where because the man wouldn't sign a general consent and had signed them in the past, they went back and opened up all his returns going back to 1974 because they had never voided the unlimited consents he had signed in the past. And it almost sounds like Peak. I'm out of time, Senator.

Senator DECONCINI. That's all right. Do you want to finish up?

Mr. RUBENSTEIN. OK. All right. Believe it or not, I have some complaints from IRS agents. See, in our group, we don't allow IRS agents to join our group, but we do have a lot of ex-IRS agents, people that were there as recently as a month or two or three ago, so they told us complaints and how they feel about it.

TAX SHELTERS

It's kind of interesting, and it may be interesting to Mr. Berry. They want to know why there are so many special projects. They said over 50 percent of their time right now, the office seems to be concentrating on tax shelter projects. I don't question it. I hate tax shelters, and I hate abuse of tax shelters. I think a person ought to be ashamed to go into it. But that's beside the point. Why disrupt the regular audit program and why get it down to where you're going to skip like Mr. Goldberg says, it looks like this year hardly anybody is going to be audited because the IRS is just concentrating on these two cancers or fires or whatever you want to call it, the abuse of tax shelters and the tax protesters.

I believe Congress should give them additional people for those special projects. I think there are fires, and I think they ought to be put out, but not with the regular Internal Revenue agents because the word gets around, and nobody is going to be audited in 1981; why don't we do a little cheating, or nobody is going to be

audited in 1982; why don't we write off the boat? And everybody has heard of these phony churches, and everybody has heard of the wealthy people that don't pay taxes, and even unfortunately, our own Attorney General admitted he was in a questionable tax shelter.

So the morale of the average taxpayer is dropping very rapidly since I've been in the business since 1947, and I wish it would turn around. I'm a patriotic citizen in addition to a practicing CPA. Thank you.

FLAT TAX RATE

Senator DECONCINI. What do you think about the flat tax rate, Mr. Rubenstein?

Mr. RUBENSTEIN. I think a flat tax rate appears fair if it can be worked out. But I think there's so much pressure that I don't think you'll ever be able to get it through. Because I'll tell you why. I'll point out to you right now, just the little, tiny pressure, two hypothetical twins, each inherit $10 million and one guy says, "I'm going to invest in the stock market." The other fellow says, "No, sir. I'm going to invest in lots in Phoenix. I'm going to buy every corner available." And so they each invest $10 million.

INEQUITIES IN TAXATION

Three years later, they've both been right. Both investments are worth $20 million and so they cash in. The fellow that's invested in the stock market, he gets to pay capital gains on it. There's no question. He's not a dealer. The fellow that sells all these lots, the first agent says, "Wait a second. This isn't ordinary income. He's got to pay 50 percent because he's a dealer in lots." There's so many unfair parts of the law right now, I don't know. I wish you lots of luck. I think it would be the greatest thing that could happen, but I really don't believe there's a chance.

Senator DECONCINI. I'd like to, if you don't mind, send you our legislation and some information and have your comments on it.

Senator RUBENSTEIN. I'd love to see it, and I'd love to pass it out to our members.

Senator DECONCINI. Thank you very much, Mr. Rubenstein.

STATEMENT OF ROSCOE EGGER, COMMISSIONER OF INTERNAL REVENUE SERVICE—Resumed

HOUSTON INCIDENT

Mr. Egger, would you and Mr. Berry care to return for maybe 10 minutes and give any comments you might have? I'm interested to know if you're aware of the memorandum that was cited and put into the record by Mr. McCarville recording the Houston incident. If not, we can discuss it later.

Mr. EGGER. The only thing I know about it, Senator DeConcini, is the testimony in Tucson——

Senator DECONCINI. OK.

Mr. EGGER [continuing]. And what's occurred today. We have not had an opportunity to look at it.

Senator DECONCINI. OK. I will take it from the record and send it to you in due course, and I would like to talk to you about it. Do you care to make any comment?

ACCOLADES TO WITNESSES

Mr. EGGER. Yes; I'd like to make two or three comments here that might be useful. First off, I'd like to compliment Mr. Rubenstein on some of his comments. In fact, I think I might invite him to come and address the Internal Revenue Service. He was good for my morale this morning, and I appreciate his comments, and those of Mr. Goldberg as well. Almost everything they said, I agree with, except in a few specifics.

RECRUITING PERSONNEL

But they mentioned the quality of training of our revenue agents. There is no question about it, the problem starts with recruiting. And the budget all by itself is almost a negative factor in our recruiting because what happens is we don't get our budget approved until virtually the start of the fiscal year, by which time that year's graduating class has already gone and so we have to attempt to do recruiting at a time in the year when the new graduates for that year have already found positions in other areas.

LOSSES TO PRIVATE INDUSTRY

Second, we do recruit probably more accounting graduates than any other entity in the country. But here, we're competing at about a $4,000 to $5,000 a year disadvantage for college graduates. And then finally, in terms of ongoing compensation, the experienced revenue agents can almost invariably step out into the private sector at significantly higher earnings. And so, for example, when something new came along, like the windfall profit tax, we lost a signficant number of our fully experienced grade 13 and 14 revenue agents in the Southwest region and also here in the Western region, who had become familiar with the windfall profit tax, and who were in very high demand by the petroleum and related industries. So there isn't any question but what in recruiting and compensation, we are at that same disadvantage that each of these gentlemen mentioned.

IRS TRAINING PROBLEMS

The second part of it is training. And here again, this is just a function of budget resources because we have to have the time to develop the training program and present them, but more importantly perhaps, we have to take these people out of the mainstream of production and examination and whatnot to go through the training. I have been very, very concerned since I took office with the fact that we are just not matching our counterparts in the private sector with the kind of training that we're able to offer, particularly to our examining officers. And so a good many of the problems that have been brought out here in these comments this morning such as, for example, a fairly rigid approach to allowance or disallowance of certain line items in what we referred to as the

page 2 deductions, is a direct result of lack of training and lack of experience.

COMPETITION FOR GRADUATES

Senator DECONCINI. Excuse me. Do you have trouble in filling your new positions on an annual basis, or do you have many applicants?

Mr. EGGER. We can get the recruits. It's simply that we can't compete for the top-level graduates and the top-quality people. I'm talking about people at the college graduate level, that are the high acheivers and so on. They tend to be taken away by the private sector, which can at this time at least offer them significantly greater compensation.

Senator DECONCINI. Is there any benefit professionally? I've often thought there was a benefit to have worked for the Service for a couple of years as far as getting a better job later on was concerned.

Mr. EGGER. Oh, absolutely. And that's the reason why we do get them in, because of that professional qualification which stands them in good stead regardless of whether they continue to make government their career or go into the private sector at a later date. But we are at somewhat more of a serious disadvantage right now than has been the case in a good long while. And that's due primarily to the fact that compensation in general in the Federal agencies has been held down to 4- and 5-percent increases annually, as against the 10- or 12-percent increases that have been common in the private sector.

PRIVILEGE TRANSACTION TAX

Senator DECONCINI. Mr. Berry—may I interrupt you, Mr. Commissioner? I want to ask you a question regarding Mr. Mettler's testimony and the privilege transaction tax in Arizona. Are you familiar with why that is no longer a deductible item?

Mr. BERRY. I am not, Senator. That was the first I had heard of it actually. We certainly will look into it.

Senator DECONCINI. Would you mind responding to that and giving us some background on that?

Mr. BERRY. I surely will.

[The information follows:]

DEDUCTIBILITY OF ARIZONA'S "TRANSACTIONS PRIVILEGE TAX"

Issue.—Are taxes levied by the State of Arizona on the sale of new residences deductible as sales tax by a taxpayer?

The Internal Revenue Code provides for a deduction from Federal income tax for state and local general sales tax paid during the year. A sales tax is a tax imposed upon persons engaged in selling tangible personal property or upon the consumers of property which is a stated sum per unit of property sale or which is measured by the gross receipts from the sale. A general sales tax is a sales tax imposed at one rate with respect to the sale at retail of a broad range of classes of items. To qualify as a deduction, the tax must meet both of the following tests: (1) The tax must be a tax with respect to sales at retail, which may include a tax imposed on persons engaged in selling property or furnishing services at retail if the tax is measured by gross sales price or by gross receipts from a sales or service, and (2) the tax must be general in that it must be imposed at one rate with respect to the retail sales of a broad range of classes of items.

Arizona does not have a general sales tax as such. Instead, it has a series of "transaction privilege" taxes. These taxes are measured by the amount or volume of business transacted by persons on account of their business activities and in amounts to be determined by the application of rates against values, gross proceeds of sales, or gross income, as the case may be.

Three transaction privilege taxes are applied to contractors for a combined rate of 4 percent after exclusions of payments for labor (a flat 35 percent of the gross proceeds) and the fair market value of land. Accordingly, these taxes are not measured by gross receipts (gross sales price minus 35 percent land value). Because they are not measured by the total gross receipts, they do not qualify as general sales and are not deductible.

ARBITRATION OF SMALL TAX CLAIMS

Senator DECONCINI. His testimony was quite persuasive. I want to ask you a question, too, Mr. Egger, about the suggestion made by Mr. Lee regarding arbitration to find some middle ground on smaller claims. How does that strike you?

Mr. EGGER. We've discussed that in the Commissioner's advisory group. I believe Mr. Lee brought it up there, and we have looked at it. It has a lot of merit. It also has some difficulties in terms of whether or not if that sort of thing is to be administered by the Internal Revenue Service, as an administrative settlement procedure, whether there's really any change from our present appeals procedure, or whether this would be perceived as being more independent.

If it's not administered by the IRS, then the question is whether or not it ought to be in Tax Court, or whether or not the small case procedures need to be modified, and so on and so forth. The chief counsel is considering this to determine whether there is some way in which we might modify our own approach in order to address that. I think the point is well taken, clearly. The taxpayer's looking for another person to whom he or she can make their case and in whom they have confidence that there will be an objective review. We try as well to persuade taxpayers that the appeals procedures accomplish that. I'm satisfied that not everyone believes that that's the case.

INFILTRATION OF CONFERENCES

Senator DECONCINI. I have one other question. Going back to Mr. McCarville's testimony and not being specific as to the memorandum that he has submitted to us, do you have a policy of attempting to infiltrate or send criminal investigators into such conferences of professionals who may be interested——

Mr. EGGER. No, sir.

Senator DECONCINI [continuing]. In finding——

Mr. EGGER. No, sir. We have no such policy. I do not know the circumstances of that particular situation. As you are perfectly aware, the whole tax protester problem is a severe one for us, and we're concerned about the promoters of those schemes and the promoters of those ideas because they tend to mislead taxpayers.

They tend to misinform taxpayers, and any information that we can get to assist us in carrying out that part of our obligation, we certainly would like to have. It is clear that our policies would preclude anything that is improper or illegal, such as I think you men-

tioned tapping telephones. Well, clearly, we do not do that, and we have not done it and the law prohibits us from doing it.

Senator DECONCINI. I know it does. I'm not sure the law prohibits you from sending someone in disguise as an agent as a defense lawyer who might want to have legitimate discussions with other lawyers on how to defend against the Government.

Mr. EGGER. As I said, I do not know the circumstances of that case.

Senator DECONCINI. But you don't know of any other active, ongoing surveillance of operations?

Mr. EGGER. Clearly, we use undercover agents from time to time. We use them in drug cases. We've used them up in waterfront problems in New York where they have been undercover for as much as 6 or 8 months. And if their covers were blown, their lives wouldn't be worth 15 cents. And so we do use it, and we use it in very, very carefully thought-out and carefully reviewed situations. So I——

POSITION ON CRIMINAL INVESTIGATION LEGISLATION

Senator DECONCINI. One last comment. I made a statement this morning that I was under the impression that as of 2 years ago, the Internal Revenue did not support the Nunn-Chiles-DeConcini legislation that would put you back into the criminal investigation arena other than dealing with fraudulent returns or income tax matters.

Can you give us any update on what your position would be?

Mr. EGGER. I believe that the Treasury Department did support that legislation. There may be aspects of it with which we disagree, but the bill that was up last year, I know, I testified on and testified in support of it.

Senator DECONCINI. You do support it?

Mr. EGGER. Yes.

Senator DECONCINI. Then I'd like the record to stand corrected. I wanted to ask you that. In other words, you have no objections if you are involved in other criminal investigations regarding the tax consequences. My understanding now is that you're prohibited from doing that if the DEA calls you——

Mr. EGGER. The problem is, that isn't entirely accurate. The problem is disclosure. We cannot, under the law, make disclosures of tax returns or taxpayer information.

Senator DECONCINI. Then you have no objection to the law being changed so that you could make disclosures?

Mr. EGGER. The current bills that are up now, I believe, have the support of the Treasury Department. I talked, as a matter of fact, on the phone yesterday with the Treasury on that legislation, and I believe it's going to be supported by the administration.

Senator DECONCINI. Thank you. Mr. Berry, do you care to——

Mr. EGGER. Let me just give you a couple of other points here that got brought out.

Senator DECONCINI. Yes.

DIF SCORING

Mr. EGGER. One is audit selection and the DIF scoring. And I'll back that up by talking about the taxpayer compliance measurement program [TCMP]. These two things fit right together. The TCMP is a program which we carry out every 3 years, in which 50,000 returns are selected by random sample for the purpose of gathering statistics with which to do all of our projections, with which to make revenue estimates, to make estimates of such things as an understatment of income and how much tax is being avoided in this or that category, and so on and so forth. Those are statistics that are very carefully gathered from these TCMP audits. It is from that statistical base that the DIF—discriminant function formula—is developed and then applied and used to score every single return that goes through processing.

Each return that goes through our process is then given a score, and those that score above an amount, an amount that is determined on an annual basis, are then selected as potential for examination. The higher scores indicate to us based on our statistical analyses, which by the way have been going on for over 20 years, that those returns are likely to have a higher probability of change, whether for deficiency or for refund. Once those returns are selected, then as districts are ready for the examination program, the returns are sent to the district from the service centers in batches of, say 500. Those returns are then classified in the district, and each return is looked at by an experienced classifier. And it is there in the classification process that we hope to identify returns that perhaps ought not to be there, or where we look at a return and conclude that, well, the only thing we really need to look at here is the charitable contributions and so on.

So each of those returns is classified and given a sort of pattern examination, and that is why the individual gets a notice saying that his return has been selected for examination, and please send us your cancelled checks or copies of your cancelled checks on your charitable contributions. And if he does that, that's the end of it. We close that year. That's it.

TCMP EXAMINATIONS

However, when we find something wrong, we do occasionally reopen a return that's been examined in that fashion. Or perhaps as the examination itself takes place, something else comes out that we didn't recognize in the classification, and so we may extend the examination beyond the item that we included in the first report. So that's essentially how those things come out. The TCMP examinations I know are burdensome to taxpayers. By the same token, we hope not to have too many taxpayers go through too many of those TCMP exams, because the are a bit laborious. But they do provide a statistical base with which we're able to cut down the number of no-change returns that we examine by almost 100 percent.

It is not in our interest to examine a return that doesn't need to be adjusted. That's simply a waste of time. So what we'd like to have is every return we examine requires a judgment. We'll never achieve that, of course. But we have come down from something

like 40 percent no-change, to in the lower thirties or high twenties, percentagewise.

So we've made significant strides in that area.

PROBLEMS WITH RESTRICTED WAIVERS

Then finally, I'll make one comment, and that's on the restricted waivers. These were what was mentioned by Mr. Rubenstein on wanting to close a tax year or an exam on all the items except, say, the tax shelter. We use these restricted waivers from time to time. But I'll tell you, the number of times when they have been troublesome for us greatly outweighs the advantage to us and to the taxpayer to be able to close up a year in part, except for one item.

Problems arise when we sign with a taxpayer or we accept the restricted waiver, and then later on, something comes up in the course of pursuing that particular item that we didn't know about. And there we are, high and dry on that particular return with respect to an item that had not surfaced there before. So our policy in general is not to accept restricted waivers, simply because it ties our hands entirely too much in attempting to——

Senator DECONCINI. Well, in the area of tax shelters, isn't Mr. Rubenstein's suggestion a very good one that if the tax shelter is what is being audited or is reviewed, that you clear the balance of the return?

Mr. EGGER. I'm simply saying that is we accept the restricted waiver which says that the statutes will close it except as to that item——

Senator DECONCINI. Why can't you do that so the taxpayer——

Mr. EGGER. Because we may find another item we didn't know about may surface.

Senator DECONCINI. Well, why don't you look at the whole thing so the taxpayer may know this whole thing isn't going to hang over his head because in your judgment, he happened to make an investment in some questionable tax shelter? Why can't you look at his tax return and say yes or no, assuming it's OK; let him be relieved of that so he doesn't go around with that hanging over his head while he continues to negotiate or work out something on the tax law?

Mr. EGGER. What I'm trying to say is that in addition to the tax shelter, there may be an item of which we have no knowledge, but which comes out as a result of pursuing the tax-shelter item itself. And that has happened. In fact, one was brought to my attention just a week or so ago where a significant item that should have been adjusted cannot now be because of restricted waiver.

Senator DECONCINI. I see. In other words, your concern is that tax shelters go beyond just the tax shelters?

Mr. EGGER. Absolutely.

Senator DECONCINI. And your experience demonstrates that that's true?

Mr. EGGER. Right, yes.

Senator DECONCINI. Frequently?

Mr. EGGER. Yes. Frequently enough that the restricted waiver procedure—which, you know, on the surface, obviously has merit. But we have run into many problems with it.

Mr. Berry may have some further comment on it in terms of his direct experience.

[The information follows:]

SERVICE POSITION ON USE OF RESTRICTED CONSENTS

BACKGROUND

1. IRM 4541.71:(1) states that, if the conditions enumerated in policy statement P-4-37 and IRM 4541.71 exist, the person charged with the return will ask the taxpayer to sign a restricted Form 872-A. Also, when these conditions are met, the group manager will instruct the examiner to solicit a restricted Form 872-A. The same is true for returns charged to Return Program Managers.

2. Restricted consents are to be requested in all cases where flow-through issues are present and where the only items determined worthy of examination are those resulting from the flow-through issues.

3. The restrictive language to be included on consents involving partnership flow-through items is contained in IRM 4541.71:(4)(d), (e), and (f); and such language may be used without prior approval of Counsel.

4. It is the position of Examination that restricted consents are to be used in all cases where their use is appropriate.

It is the policy of the Service to restrict a consent to extend the period of limitations for assessment to one or more issues where, in the light of reasonable tax administration, resolution of such issue or issues requires the establishment of a Service position through court decision, regulation, ruling, or other National Office action, or where other equally meritorious circumstances exist.

The Internal Revenue Manual requires (section 4541.71:(1)) that, in district office Examination Divisions, the person charged with the return will ask the taxpayer to sign a restricted consent Form 872-A (Special Consent to Extend the Time to Assess Tax) if the conditions in policy statement P-4-37 are met. Additional conditions for requesting restricted consents are contained in the Internal Revenue Manual. In cases where there are flow-through issues from partnerships and there are no other issues present in the case, the Examination Division employee charged with the return is required to ask the taxpayer to sign a restricted Form 872-A. The Internal Revenue Manual contains several restrictive language paragraphs which may be inserted on the consent.

The Service will not accept restricted consents in cases where it would be difficult to write the restrictive language or where there is a complex issue. Through experience, the Service has learned that it is generally difficult to write restrictive language when there are more than two issues present in the case. In partnership flow-through situations, the restrictive language paragraph is considered to be one issue which covers all of the flow-through items from the partnership or partnerships identified on the consent.

Senator DECONCINI. Mr. Berry, let me—are you going to be here this afternoon?

Mr. BERRY. Yes, sir.

Senator DECONCINI. Let me put you off until 2 p.m. I would like to have your observations regarding restricted waivers and any comments you'd care to make about the morning testimony.

COMMITTEE RECESS

The committee will stand in recess until 2 p.m. when we will meet here again to receive testimony from individual taxpayers on their personal experiences with the Internal Revenue Service. Thank you, Mr. Egger, very much. Thank you, Mr. Berry.

(AFTERNOON SESSION, 2 P.M., FRIDAY, JUNE 4, 1982)

INTERNAL REVENUE SERVICE

STATEMENT OF PRESCOTT BERRY, DISTRICT DIRECTOR—Resumed

Senator DECONCINI. The subcommittee will come to order. I apologize for the delay. Mr. Berry, if you'd like to come on up. I do want to mention that this afternoon, we have scheduled witnesses to appear and we would ask that they sign a waiver sheet that will allow us to discuss any particular case in this hearing and for IRS to respond to that case. It's an absolute necessity if you want to talk about those cases.

Also if your tax case involves a joint return, your spouse will have to sign the waiver. But we can't discuss the cases that you may want to bring up before us unless you do.

Also I just want to remind you, those that are here that we have a scheduled witness list of some eight or nine witnesses here this afternoon. We are not going to be able to take witnesses from the audience. We may schedule a public forum later. This hearing was scheduled knowing that there were a number of witnesses whom had contacted our offices with cases and who specifically requested an opportunity to be able to testify at these hearings.

So if you are interested in testifying at another forum or the possibility of being a witness, I wish you would contact Margot Myers on my left, your right, and give her your telephone number and address where you could be reached.

Mr. Berry, do you want to take up where we left off?

BACKGROUND ON RESTRICTED CONSENTS

Mr. BERRY. Yes. Prior to the recess, Senator, there was a question raised regarding the procedures for the use of a restricted consent. My response to that is we do, in fact, use a restricted consent under certain conditions. Those conditions are outlined in procedures in our Internal Revenue Manual. Additionally, Policy Statement P-4-37, covering restricted consents, was approved in March of 1981.

There are conditions under which we do not accept restricted consent as well. One exception is generally where there are more than two issues involved that have not been resolved, or where there are multiple flow-through entities involved—partnerships or small business corporations—that would present us with some virtually unsurmountable control problems. But our general response is, yes, we do accept restricted consents under certain conditions and on a case-by-case basis.

COLLECTION PROCESS

There was one other item also, Senator. A great deal has been said about the collection process, and I think we would be remiss if we did not outline for your some of the changes that have been made in the collection practices in the past 7 to 10 years—changes that were made in the context of trying to ease the burden on the taxpayer. At one time, the agents of our organization were accused of being harsh with the taxpayers because they were evaluated based on production statistics. Well, as the record would show, no enforcement employee is evaluated on the use of statistics. We design and develop several notices to be provided taxpayers, both in English and in Spanish. Outlined in these notices that are mailed to the taxpayer are procedures for handling an unpaid liability, procedures for handling claims and refunds, and—in specific detail—their rights with respect to the delinquent liabilities. And we have such procedures not only for individual tax accounts, but for employer business accounts as well. Business accounts actually present us with more of a problem, because of the nature of the liability. It primarily has to do with trust fund taxes that are held in trust by the employer after they have been deducted from the taxpayer's wages. We have developed these items with the intent to make sure that there was a broad-based understanding of our procedures, as well as the taxpayer's rights under the conditions of delinquency.

SEIZURES PROCEDURES

We also implemented supervisory controls with respect to seizures of property. Our group managers are responsible for approving seizures. If it is a personal residence, it requires a higher level of approval, at the branch chief level or the division chief level.

At the same time, a change in the seizure procedures necessitated securing a court order before seizure. A writ of entry for assets located on the private premises of an individual was another instrument implemented to try to assure that the taxpayer was given a fair opportunity under Internal Revenue Service rules. We also instituted a first-time deliquency program, whereby if taxpayers were delinquent for the first time, they were allowed to establish an installment payment agreement within certain very general limitations. We implemented a 30-day-hold period subsequent to the assessment of a 100-percent penalty assessment involved in trust fund tax cases.

We have emphasized payroll deductions to pay delinquent taxes. We allowed for partial levy, and we liberalized our program with respect to part-payment agreements, which at one time in our history we did not accommodate. I think it's important to note that all these things were done while concurrently establishing the Problem Resolution Office.

We have implemented these changes in an effort to do a better job in our collection process.

Senator DECONCINI. Do you have any policy regarding surveillance in the criminal area as were made reference to this morning by Mr. McCarville?

UNDERCOVER ACTIVITES LIMITED

Mr. BERRY. As the Commissioner stated, we do engage in undercover activities in certain situations. However, these activities require several levels of supervisory review and approval. They're only undertaken in exceptional cases where it's felt that the conditions and situations are such to warrant that type of activity. It is an option that is available to us. We have used it, and we anticipate that at some time in the future, we will use it again under conditions that indicate that such an approach is necessary.

Senator DECONCINI. Would you use it if a defense seminar of tax attorneys were meeting here in Phoenix to——

Mr. BERRY. I would not authorize such a thing, Mr. DeConcini. I would not.

Senator DECONCINI. I'm glad to hear that. I can understand the need for surreptitious activities and undercover activities having been in law enforcement myself. But I'm a little disturbed at some of the testimony that came forward today.

Commissioner, do you care to——

Mr. CARDOZA. Just on that point, I would say before surveillance of that type would be taken out, I have no facts with regard to the incident case that was referred to that happened in Houston, Tex. But I'm quite sure that knowing the controls that the Internal Revenue Service has on that type of activity, that it would not be undertaken unless there was a great indication that there was some violation or some advocation of violating the tax laws.

Senator DECONCINI. I'll tell you, Mr. Cardoza. The Bureau of Alcohol, Tobacco and Firearms and the Secretary of the Treasury told us the same thing, and they've had some of the most flagrant abuses of rights of breaking into peoples cars and beating up people and taking them into custody. If you don't know, I suggest you read the Congressional Record. It can happen to any well-intended law enforcement agency, whether it's Internal Revenue Service or Treasury agents. And I just don't believe that it couldn't happen in your agency because you're so careful. I know you're not looking for a lecture, and I don't mean to be giving you one. But I just don't accept that. It happens because people in law enforcement get carried away and are not careful on a day-to-day basis when they're dealing with the right to invade privacy on a legal basis.

Mr. CARDOZA. I appreciate that.

Senator DECONCINI. Thank you very much.

Mr. CARDOZA. I assume that we will have the opportunity, to the extent permitted, to get the facts in the record with regard to Houston?

Senator DECONCINI. I hope so. I'm going to take that memo and send it to the Director or the Commissioner and ask him to respond to it. I'm very interested in knowing just what the other side is, if there is one. They very well may be justified in doing that when it was happening and whether or not it is still occurring. I think those kinds of things, assuming there isn't a justifiable reason, cause great credibility gaps in any law enforcement agency, and it's very important that we get to the bottom of it. Thank you very much.

Mr. CARDOZA. Thank you.

Senator DECONCINI. And thank you, Mr. Berry.

Our first public witness this afternoon will be Dr. Kenneth Johnson. Doctor Johnson? How are you today, sir?

STATEMENT OF DR. KENNETH JOHNSON

PRINCIPLES OF CONDUCT

Dr. JOHNSON. Fine.

Senator DECONCINI. We have a waiver form here. Can I submit it to you, or did you sign one?

Dr. JOHNSON. I have it right here.

Senator DECONCINI. Very good. Thank you.

Dr. JOHNSON. May I go ahead?

Senator DECONCINI. You may proceed. We have 15 minutes allowed for you.

Dr. JOHNSON. How much?

Senator DECONCINI. Fifteen.

Dr. JOHNSON. OK. The lead line this morning in one of the radio stations was the IRS is on the block. And I agree that it should be. I've just spent 3 years jousting with the Internal Revenue Service over principles of conduct, principles guaranteed by our Constitution which are under attack by encroachment by this Federal agency, the Internal Revenue Service. I have learned a lot, and I'm still learning, and several of my friends and colleagues in medicine insist I would not have needed quadruple bypass surgery on my heart 6 months ago had I not been forced to protect myself from the malice of the Internal Revenue Service.

It has been a period of anxiety and stress, a time to feel the mood of a Federal agency which has become unbridled and needs to be bridled. A few months ago, my wife, watching with concern as I dealt with the IRS and its intrusion into our lives, wrote down its chronology. And I would like to read her notes documenting the past 3 years. They were written to clarify her thoughts at a time of considerable frustration, and here are her notes.

INTIMIDATION

Is it the KGB in Russia, the former Gestapo in Germany or the IRS of the United States? My hairdresser, divorced and raising a teen-aged daughter on a meager salary, is brought in by an IRS agent and told that she is lying when she reports her tips on her income tax. They intimidate her and force her to pay a few hundred dollars more that year. There's no way she can fight them. There's no one to whom to turn. There's no recourse. For it takes expensive counsel.

A postal employee when he saw a letter addressed to the IRS spoke openly of his resentment. He was intimidated and disbelieved by the IRS concerning his own taxes. Despite his innocence, he was presumed a cheater and forced to pay a few hundred dollars to the government because he could not prove his innocence. The question is why has the average United States citizen, when dealing with the Internal Revenue Service, lost his or her constitutional guaranty establishing that one is innocent until proven guilty? Why is one presumed guilty until one proves innocence?

Now this is my wife talking. She says:

I've always been a fighter. There have been many causes that I wanted to fight for and against but usually my husband would prevail by saying, "What's the point? You're just going to batter your head against a stone wall. Why don't you pick up some point or issue that would really make a difference?" So we, as a family, have happily gone through life enjoying the many benefits of this great country, raising

our three boys in a Christian manner, willing paying taxes until 1978 when we knew there was a cause worth fighting for.

SERVING A SUMMONS

So now for three years, our energies have been directed to a serious problem in our country, namely, the harassment and intimidation of the taxpayers by the Internal Revenue Service. It all started one day when I [my wife speaking], was resting on the couch in the late afternoon, having worked hard getting the house clean and the dinner prepared for a small family get-together. The first thing I noticed was a woman in one of—looking into one of my back windows. I knew the back yard was all enclosed and the gates were shut.

I would have been terribly alarmed had this been a man, since there had been increasing burglaries and other forcible entries in our area in the past few years. I did nothing for several minutes, watching her as she snooped through all of the back windows and the doors which had windows, and finally determining to find out who she was, I opened the back door. And when questioned, she told me she was an Internal Revenue agent serving a summons to my husband.

I knew my husband had been unhappy with the Internal Revenue Service recently, and he had been reading some of the laws concerning the rights of individuals under the Freedom of Information Act of 1966 and the Privacy Act of 1974 passed then by Congress.

I also was aware of an accountant who had stated that he had been involved in audits with the Internal Revenue Service for 30 years, but in the past 6 or 7 years, these auditors have become increasingly intimidating, even abusive and threatening. I look back on that single incident of the snooping IRS agent, and truly believe that I should have called the police when I first saw her and had her arrested as an intruder or trespasser. She not only failed to make an attempt to ring the doorbell and find out if someone was home, she entered a private enclosed area in our backyard and somehow even bypassed a guard that required identification of anyone entering our townhouse area.

DIRTY TRICKS

If this seems threatening, I would later tell you about my husband's experiences concerning the dirty tricks of the IRS. One of them occurred when they ostensibly sent a letter that he never received. And they acknowledge that it was undelivered, but they deemed it delivered and that letter demanded payent for $32,000. And if this demand was not fought immediately, it was due and payable without any recourse of action.

AUDITS

Let's go back a few years and review the facts. My husband had a busy medical practice in the community. He was active in religious organizations and a recipient of several civic awards and kept excellent office records, hired good secretaries, and accountants, and tax consultants so he would be able to pay his fair share to the Government. About 1971, several years previously, an extensive audit uncovered one check mishandled by an accountant with a change in the tax of approximately $200. In subsequent years, an audit was requested by the IRS in 1977 for the years 1975 and 1976, and he again dutifully opened all his books and records and the Internal Revenue agent spent approximately 4 days with the accountant at our expense going over our personal income tax, his professional tax corporation, and a partnership tax that had resulted from the association that he had had with his other three medical partners.

Despite days of searching, there was no change in the tax periods mentioned. One, the income of my personal income tax, his professional corporation tax, and the partnership tax. The Internal Revenue agent at the end of the audit even asked to review the 1977 tax reports. And after doing so, stated that they were similar in nature and they appeared to be in compliance with the audit just cleared for 1975 and 1976. Therefore, in the following year, 1978, when my husband received another request for an audit for the year 1977, which had already been reviewed, he felt harrassed because the Internal Revenue service again expected to obtain all books and all records to document one's deductions. It had already been a waste of taxpayers money for the expensive audits, and my husband had read about the rights of individuals an the Freedom of Information Act and the Privacy Act, and he felt he should request what possible errors or suspicion of fraud were in our personal income tax that year.

REQUEST FOR ANSWERS

He sent them a list of questions that he wanted answered.

They refused to answer any of these questions, as was his right based on these acts, and they subpoenaed him to appear with his records in November 1978. My husband had two meetings, one a hearing and the other a summons to appear for our personal income tax of 1977. Each time he took a tape recorder and a witness with him.

He reiterated on these occasions our right for knowing whether there was any error, or suspicion of fraud, or what was wrong, but they would give him no answers. He then had no further contact with them concerning our personal income tax for some 18 months. However, the Internal Revenue service, after some maneuvers, decided to question his 1978 professional corporation tax report. Therefore, a hearing and finally a summons was issued for these reports. Again, my husband asked to know what likely errors or questions of fraud were found, and then in July, unknown to him, they initiated the dirty trick mentioned earlier.

90-DAY DEFICIENCY LETTER

In November 1980—I'll go back to that dirty trick in a minute—A hearing in Federal court was convened concerning the 1978 professional corporation tax. The IRS was trying to force an audit without answering any questions asked by my husband: 3 days before the court proceedings, they revealed the alleged fact, the dirty trick, that the IRS had sent a 90-day deficiency letter in July 1980 disallowing all deductions of this professional corporation for 1977. That was in reality the entire expenses of my husband's office practice. These deductions included nurse's salary, office rent, drug supplies, office secretarial services and so forth. My husband never received this letter. And by the time he found out about this alleged deficiency letter, it had defaulted and the IRS had already sent to the Division of Collections a demand for $32,000, $2,000 expense for negligent penalties and interest. This occurred despite the fact that he had never seen the letter.

It also should be noted that this disallowance was for the same expenses that had been allowed in audits by his professional partners. It is also an interesting fact that one partner had the same expenses that had never even been audited. Furthermore, when the alleged deficiency letter came to light, legal counsel wrote a letter requesting an abatement of them to collect this money because it violated due process of law.

THREATS OF LIENS AND GARNISHMENTS

The Internal Revenue Service did not even bother to respond to the letter and allowed the notices of election to proceed with threats of liens on property and garnishing of income. This forced my husband to file a lawsuit in Federal court to stop this action.

And with no regard to fairness, the Internal Revenue Service allowed the legal process to proceed, requiring of us the preparation of extensive supporting briefs and affidavits for presentation in Federal court. On the day of the Federal court hearing and in front of the judge, they abruptly and finally withdrew any claims of collection. What insensitivity. What callousness. The judge instructed them to provide written evidence to my husband that they had rescinded the order of collection. We won our point in this second court case, but it was expensive and could have been handled easily by a brief letter from the IRS.

But we were forced to go to Federal court to protect our rights. Furthermore, it is a sad commentary that not only does one have to pay for defense aginst the IRS, but we as taxpayers pay for the expensive, unnecessary harassment.

FIRST COURT HEARING

Now let's go back to the first Federal court hearing and action in November 1980, when we—by this time, we had allegedly owed $68,000 in unpaid taxes. The IRS was convinced that with the intimidation of these two 90-day deficiency letters claiming this unpaid tax, both coming into light only a few days before that my husband would be so intimidated that he would call off the court trial and capitulate to the demands. However, such was not the case. He insisted that the trial be allowed to proceed, and the Federal court was held.

The judge was a crusty, white-haired man who listened to the evidence. The Internal—the IRS counsel was not particularly well prepared. Even the judge asked one IRS agent on the stand some gritty questions, why the IRS was not willing to

answer legitimate questions asked by my husband at the time of the previous meeting.

At the end of the hearings, the judge then ruled without prejudice in my husband's favor. No request for—nor request for appeal of this decision ever came from the IRS.

REQUEST FOR RECORDS

The last and final confrontation in Federal court again was instigated by the IRS to force him, my husband, to show them all of his professional corporation's records for the same year—1978. This was almost the same identical request altered with some slight variations.

My husband told them in court that he was willing to do so, but insisted on protecting his records and his rights. This time, the same judge ordered the Internal Revenue Service and my husband to compromise in some tangible way. Knowing that his records were in good shape, my husband suggested that the Internal Revenue pick three areas of perusal—for perusal that might be suspect. They agreed. And after perusal and an audit in these areas, they found absolutely nothing. I thought that they would be satisfied, but, no.

ALLEGED DEFICIENCY AND RESCISSION

A few days later, my husband received a letter from the IRS arbitrarily detailing alleged deficiency in other areas, not agreed upon in the perusal, or audit, or not even looked at.

The letter demanded agreement by my husband for payment immediately. Through legal counsel, he told them that if they insisted on this arbitrary and unauthorized request, he would pay it under protest and file suit in Federal court for its return.

Shortly, he received a notice that they had rescinded this arbitrary assessment. They then dismissed any Federal court action for the third time.

INVESTIGATION BY FBI

Yes, we fought them three times in Federal court action and won. But this is not the total distress caused by the Internal Revenue Service. My husband can tell you about being investigated by the FBI. He can tell you about the lie of being labeled a "Fifth amendment Tax Protester," despite the fact my husband has never mentioned the fifth amendment and was only concerned about protection of our human rights under the fourth amendment of the Constitution. He was not hiding against the fifth.

Dr. JOHNSON. Now, these are the clarifying notes written by my wife this past year. Now, I should tell you that my wife has documented them very well, these sad 3-year experiences that I've had. The Internal Revenue Service has, without justification, sent deficiency letters totaling large sums of money without legal right. They have invaded my privacy. They have incorrectly labeled me a "Fifth Amendment Tax Protester." They have requested and obtained FBI investigation.

COSTS OF DEFENSE

They requested me to go to Federal court two times, and they lost three times. I had to drag them into court once. I've been required to have expensive accountants and legal counsel to defend myself. The Internal Revenue Service has immense resources of money and personnel to force and harass. All taxpayers pay for their paranoia and their insensitivity.

The Internal Revenue Service dumps easily documented tax deductions into the tax court and overburdens the system. Individual agents fume and plot with zeal the harassment of the taxpayer. They refuse to answer legitimate questions. They no longer consid-

er themselves civil servants, but act outside the law with dirty tricks and oppressive power.

The Internal Revenue Service violated our basic right of the freedom of taxpayers in the 1970's and 1980's, similar to the violation of the civil rights of the blacks—to the blacks by southern judges in the 1960's.

And there is a Federal law that allows individuals to sue and receive monetary damages for abuse of power, and it may be necessary to use this law.

Now the Freedom of Information Act of 1966 and the Privacy Act of 1974 are really helpful in swinging the pendulum back. Public Law (?) called equal access to justice law implemented in 1981, also serves a purpose in this regard, and this law should not be watered down.

PROPOSED LEGISLATION

Recently, the Wall Street Journal stated that the present administration was considering some changes and weakening the law, and this must stop. As a matter of fact, it must be strengthened, and even the tax court litigation with its large expenses should be covered by this act.

More legislation is needed to allow litigants who contend with Government agents to be judged by the basic laws passed by Congress and not by the slanted regulations that agencies have made as their interpretation of the basic law. More legislation is needed to require review of all regulations of Government agents, as the agents implement the law passed by Congress. No new regulations should be added by Government agents, agencies, unless the Congress reviews and passes upon proposed legislations so that these regulations carry out the intent of the law.

It's my feeling also that the TCMP, the taxpayers compliance measurement program, should be a voluntary one rather than one where people are forced to comply and show everything. They have their rights, and they can find enough people who will voluntarily give them enough information for that taxpayer compliance.

PUBLIC RELATIONS

It is sad that the Internal Revenue spends a great deal of taxpayer money on public relations material. We all hear over the radio and the television and read in the newspaper how helpful they are, how understanding when, in reality, the public relations material is such a lie. Why do they spend our money to do this? We don't need it. We resent it, and it should be stopped.

There must come a time when the Internal Revenue Service personnel become civil servants and not paranoid masters insensitive to the rights of individuals. We must erase abusive and intimidating acts by this agency.

We, as citizens of this country, should be governed by legislative action rather than by regulation from agencies. The Internal Revenue Service must come under the control of the Congress, just as the Congress is under the control of citizens who elect them. We must deny the Internal Revenue Service concept that one is deemed guilty until one can prove innocence.

Thank you.

Senator DECONCINI. Doctor Johnson, thank you. I appreciate the time you've put into that statement and bringing to our attention the particular problems that you've had. I think they set out a very good example of over-zealousness, and we thank you for this.

Doctor JOHNSON. Thank you very much.

Senator DECONCINI. I have received some material from the Internal Revenue Service relating to the issue raised by Dr. Kenneth Johnson.

The material will be inserted in the record at this point.

[The material follows:]

Issue.—Dr. Johnson stated that an audit was conducted in 1977 on his 1975 and 1976 returns, which resulted in the agent spending approximately four days reviewing income tax, corporate tax, and partnership returns and records.

Dr. Johnson claims that he sent a list of questions which were never responded to by the Service and that he was incorrectly labeled a Fifth Amendment Tax Protester.

It is asserted that Dr. Johnson's corporation failed to receive proper delivery of a statutory notice of deficiency due to the Service's mailing it to an incorrect address which resulted in an erroneous assessment of income tax and penalties.

Dr. Johnson states that a revenue agent served a summons on Joan B. Johnson, wife of Kenneth E. Johnson, by entering a private enclosed area in their backyard without ringing the door bell to find out if anyone was at home.

Dr. Johnson further states that the Service requested and obtained an F.B.I. investigation of him.

Dr. Johnson also states that he was subjected to extensive, unnecessary harassment during the summons enforcement action concerning the examination of the 4-30-78 fiscal year of the taxpayer's professional corporation.

Response.—We have made a reasonable search of our records and find we are unable to verify all of the issues set forth by Dr. Johnson. The following is provided in accordance with the information present in our records.

The waiver signed by Dr. Johnson covers only the 1977 and 1978 tax returns. Therefore, we are prohibited by law to disclose information relating to any other years.

In 1979 a revenue agent was assigned the 1977 individual return of Kenneth E. and Joan B. Johnson and the corporate return of the taxpayer's professional corporation for the fiscal year ended 4-30-77.

Dr. Johnson responded to appointment letters with correspondence including 30 questions of the nature utilized by tax protesters. It is the practice of the Internal Revenue Service not to respond to questions of this nature other than with data appearing on Publication 876, Privacy Act Notice.

Dr. Johnson appeared for a November 21, 1979 appointment stating, "I am here to present my records, but I must protect my rights," and refused to present books and records for examination based upon constitutional grounds. The Service inferred from this action that the taxpayer was claiming privilege under the Fifth Amendment. The inference has been determined to be erroneous and the label of "Fifth Amendment Tax Protester" incorrect.

The revenue agent served a summons on Dr. Kenneth E. and Joan B. Johnson by leaving it at their place of residence for the examination of records for the 1977 individual return. Dr. Johnson appeared in response to the summons and again refused to present these records for examination. Summons enforcement was not sought due to the constitutional privilege asserted, and the case was sent forward for issuance of a statutory notice of deficiency.

On July 11, 1980, a statutory notice of deficiency was issued for the fiscal year ended 4-30-77 for the taxpayer's professional corporation. The notice was sent by certified mail to the corporation's prior address, not its current address (which was available). Although the notice was returned to the Service as undeliverable, the tax and penalty shown on the notice were assessed. Dr. Johnson filed for injunctive relief from Service collection action in Federal Court, where it was determined that the corporation had failed to receive proper notice of the deficiency. All tax, penalty, and interest charges were abated. Subsequently, a second statutory notice of deficiency was sent to the corporation's correct address.

The revenue agent was then assigned the 4-30-78 return of the taxpayer's professional corporation and served a summons on Dr. Johnson by leaving it with his wife, Joan B. Johnson, at his new residence.

Since all residences at this relatively new development are similar in appearance, the revenue agent secured the location of the Johnson residence by identifying herself and requesting directions from a security guard at the gate of the development. Upon arrival at the residence, she was directed to the rear door as workmen were blocking the front entrance.

She went to the rear door of the residence and rang the doorbell several times. After several minutes, a woman opened the door. The revenue agent identified herself and asked the woman if she was Joan B. Johnson, the wife of Kenneth E. Johnson. The woman responded affirmatively and the revenue agent explained she was serving the summons on Kenneth Johnson by leaving it with her, his wife. The revenue agent served the summons and immediately left the premises.

Dr. Johnson appeared in response to the summons and again refused to present records for examination. Summons enforcement was requested in District Court. During these proceedings the District Court Judge denied enforcement indicating the summons language was "too broad," and that the Service should respond to Dr. Johnson's 30 questions.

The Internal Revenue Service has never requested nor obtained an investigation of the taxpayer by any other agency, including the Federal Bureau of Investigation.

The examination of the 4-30-78 corporate return was transferred to another revenue agent due to the prior revenue agent's promotion to another function.

To perfect the prior summons deemed too broad by the court, a new summons was prepared and served on the taxpayer at his place of business. The taxpayer appeared at the Internal Revenue Service office in response to the summons and again refused to present books and records for examination based upon constitutional grounds.

Subsequent summons enforcement action in U.S. District Court resulted in sufficient documentation being submitted by the taxpayer to enable the revenue agent to complete his examination. A no-change report was issued for that year and mailed to the taxpayer.

NOTE.—Dr. Kenneth Johnson signed a waiver authorizing the Internal Revenue Service to disclose his personal tax information for all tax years. Dr. Kenneth Johnson, as president of the corporation, Phoenix Internal Medicine, Ltd., signed a waiver authorizing the Internal Revenue Service to disclose return information on the corporate returns for the tax years 1977 and 1978.

STATEMENT OF JOHN BRANTINGHAM

ESTATE TAXES

Senator DECONCINI. Our next witness is John Brantingham. How are you this afternoon, sir?

Mr. BRANTINGHAM. I'm fine. Thank you, Senator, and you?

Senator DECONCINI. Is that a waiver there? Will you sign it for us, please?

Mr. BRANTINGHAM. I don't really quite know how to handle this waiver because it looks like it's of a personal nature, and my personal tax situation, and I'm here to testify about my mother's estate and the activity in that area rather than in any of my own personal area. I would be happy to sign an appropriate waiver for that particular situation.

Senator DECONCINI. If you care to put that on it, it would be fine if you sign your name where it says signature and on behalf of her estate, then we can at least be free to discuss it and pursue it. Thank you; proceed, please.

Mr. BRANTINGHAM. OK; thank you, sir. After listening to Dr. Johnson, I can only say amen. In 1972, my mother passed on and my father had passed on in 1954 and left a life trust estate to his three sons with my mother's life usage of that estate. And she was denied the marital deduction at the time of my father's demise,

and she contested this and it was upheld at a hearing that she would not be allowed the marital deduction.

However, when she passed on, the IRS arbitrarily, even in reversing their own previous decision, included my father's estate into her estate thereby taxing the total estate by an additional $103,000. And the greatest travesty in this whole thing, as far as I personally am concerned, is that when we got down and it was push to shove with the IRS on the $103,000, I elected to buy an airplane ticket and fly to Washington, D.C., and being a registered Republican, I went to Senator Goldwater's office. And since my mother passed on in Illinois and I had been the vice chairman of McLean County for Senator Percy, I went also to Senator Percy's office and I met with their leading assistants.

POWER OF THE INTERNAL REVENUE SERVICE

And before I left Washington, I was left—or I was frankly told outright by the two gentlemen that I met with that the IRS is too powerful for them to take a stance in this particular case on my behalf. And therefore, they would not take a stance on my behalf.

So after that situation, I found an attorney that would take the case on a percentage of the winnings, if we won, because he felt we had a very strong case. Also, after it was turned over to this attorney's hands, I was called in for collection on the interest part of this. And I took documented proof in to one of the IRS offices of the entire situation. And the gentleman in the IRS office looked at me and said, "Boy, are you being taken to the cleaners."

HARASSMENT

Subsequently, we won our case. It cost me $47,000 to win the case in the courts. The IRS was never willing to negotiate or talk with us outside of the courts. We had to take it to the appellate court, and we did win in the appellate court.

As I say, my attorney fees cost me $47,000 plus. And I didn't have the harassment that Dr. Johnson had in that particular case, although I have experienced those forms of harassment as a small businessman here in the city of Phoenix in running my own small business.

I think the reason we didn't have the harassment was when I presented my case at the time of the attemped collection of the interest, the person that I presented that information to saw the injustice, and the immensity of the injustice, and so therefore, it was not pushed and I was left along and I was allowed to carry it all the way. They checked with me a couple of times to find out how it was going in the courts, and when they found out that we were still taking action, they backed off and let the courts have a chance to operate.

BUSINESS COSTS

However, I would like to address the fact that as a small businessman, I have sold my company. In fact, I liquidated my company for the very reasons that we are here today. I think that the biggest, single problem the small businessman is faced with is the

tremendous cost of continually fighting one agency after another, particularly in the tax areas.

I fought a tax case with the city of Phoenix on sales tax that I estimate cost me over $20,000 in time and energy. When I first bought into this company, I didn't realize—I knew the company was in financial trouble. I didn't realize the full extent of it. But within 30 days after I bought into the company, the IRS was down there with its padlocks, no prior warning, very belligerent, ready to lock the doors and take possession of the property.

And it wasn't until they checked my personal financial statement and found out that I had just bought in that they gave me less than 24 hours to raise the funds to bail the company out.

And at one other time when I did an expansion and started a second company, I did run into some financial trouble and ran into exactly the same problem.

ATTITUDES

I have yet to meet an IRS person in a business fashion that has come down with the attitude, "Let's sit down and talk about this, or let's sit down and find out where you're at and what your problems are and are you going to be able to solve the problem."

Every time I've had to deal with the IRS as Dr. Johnson said, it's strictly their side of the coin, and they don't want to hear it. They don't want to talk to you about it. This is the law, as far as they're concerned.

And like Doctor Johnson, I am very, very concerned about the erosion of our constitutional rights under the administrative operation of the IRS, and their right to seizure without due process and all of these other avenues that they have for collecting funds from the point of view that they always say, "Well, once the funds are gone, we don't have any recourse. So we have to get it up front."

I can't agree with their philosophy, and I think that it's very bad that our constitutional rights are being eroded so badly by this administrative harangue that they have been able to develop, and the fact that Senators' aides have told me that they're too powerful and they cannot deal with them just absolutely floors me.

And I just—I'm flabbergasted, to say the least. I came back and it took me 2 weeks to get my cool back. So those are the facts in my particular situation.

Senator DECONCINI. Well, we thank you for that testimony, and there are occasions where today, even Senators don't get phone calls returned. It's happened to me. Not with the IRS, however. But sometimes we're ignored, too, even though we have some authority and jurisdiction over the various areas.

EQUAL ACCESS TO JUSTICE ACT

The IRS is here because we asked them to be here today, and I have to compliment them. They were very pleased to come to talk about the budget and to listen to these complaints. This is what prompted these hearings—complaints like yours where there appears to be little justification for action by this governmental agency, and yours, of course, is a case where you prevailed. So certainly, at least, the judicial decision occurred in favor of your posi-

tion and not that of the Government. But I regret that you had to go through all that. The purpose for the Equal Access to Justice Act is that if you are aggrieved that way and prevail, you ought not to at least have to stand the cost of attorney's fees and court costs. Unfortunately, that wasn't there when you were involved in this.

Mr. BRANTINGHAM. Three months, I was testifying.

Senator DECONCINI. I hope it doesn't happen to you again, and we appreciate your testimony.

Mr. BRANTINGHAM. Thank you, Senator.

Senator DECONCINI. I have received some material from the Internal Revenue Service with respect the issue raised by Mr. John C. Brantingham. The material will be inserted in the record at this point.

[The material follows:]

Issue.—John C. Brantingham was the executor of the estate of Beatrice F. Brantingham. The Internal Revenue Service raised the issue that a life estate in property granted to Beatrice F. Brantingham under the terms of her predeceased husband's will wherein she had the power to use the property for her maintenance, comfort and happiness was includable in her gross estate.

The estate contended that Congress did not intend that a property interest be included in the original testator's estate and again in the spouse's estate and that the government is estopped from including the life estate of Beatrice Brantingham's estate by the prior inclusion of that interest in her husband's gross estate.

Response.—This issue was the subject of a District Court decision in favor of the government, which was reversed by the U.S. Court of Appeals, 7th Circuit, October 8, 1980.

The Appeals Court did not agree with the estate on their contentions but instead, held that Beatrice Brantingham's power to invade the principle of the life estate was limited by an ascertainable standard and that the corpus of the life estate was not includable in Beatrice Brantingham's gross estate.

The government did not appeal the decision. However, the Service will not follow the decision for the reasons set forth in Revenue Ruling 82-63, Internal Revenue Bulletin, No. 1982-15.

NOTE.—Mr. Brantingham signed a waiver authorizing the Internal Revenue Service to disclose the estate returns, return information, and taxpayer return information, for all tax years.

STATEMENT OF MARTHA BRUNNER

HONORING THE DIVINE DECREE

Senator DECONCINI. Our next witness will be Martha Brunner. How do you do? Glad to have you here today.

Mr. BRUNNER. Glad to be here. I don't quite have a prepared statement.

Senator DECONCINI. Pardon?

Mr. BRUNNER. I said, I don't have a prepared statement like the other have.

Senator DECONCINI. That's fine.

Mr. BRUNNER. My name is Martha Brunner. I'm 37. I work for the U.S. Air Force. I returned to Phoenix in August of 1981. I was married to a Robert D. Brunner until March of 1981.

During the course of our marriage in 1976, we filed a joint return for our income tax that we owed, et cetera, in 1977. Two employers were not available, so that left—it took approximately 2 years for them to find those two employers and figure an amount. We appealed the amount because of some problems, et cetera.

They won and stated—they dropped the interest, et cetera. OK. In September of 1980, I separated from Robert Brunner, and according to the separation and a subsequent divorce, he was to pay IRS. It was on his wages. It was a small technicality, but it was—it's now at a point of $580.

I am the sole support and he does not pay child support, et cetera. Anyway, that's his choosing. During the interim also, he has assumed our youngest son's identification. He uses his social security number. He has filed wage earnings, et cetera, on his number which has been confirmed, I believe, by your officer.

They don't quite know what to do with him. They say my son could have a new social security number. That's about the extent of it.

In—before I left the Cleveland area last year, I discussed this matter with—because they wanted their money. I'm a Federal employee. I worked in the same building that IRS who were the actual investigators on the case were. And they stated that they could attach my bank account, so I was—because I was so handy and they did not have to honor the divorce decree that stated that he would, in fact, pay the amount.

According to the divorce decree also, I take the children for life. That was also stipulated. So I didn't really hear anything. I made several calls back to Cleveland. I transferred out here, et cetera. I live with my mother.

INABILITY TO PAY

In March, an investigator came out to the house by the name of Mrs. Meyers, and I returned her call, went down. I was audited. At that time, they determined that I could not pay the amount even on a monthly basis. I make approximately $12,000 a year, and she said, "There's no way you can pay this." I was approximately $400 short just on a monthly basis making expenses.

I do live with my mother, and I leave it to your imagination where the other moneys come from. And she—I said, "But this isn't fair." And she said, "No, it's not always fair." I said, "But, you know, how—you know where he's at, et cetera." I had given them the address where he was living, even though he was not living under the other social security number, et cetera. And she stated all that she could do was assure me that something would be done. The Privacy Act entered into it. She could not, you know, disclose anything regarding his case since we were no longer married.

But I, you know, again told her that it wasn't fair. She assured me that she understood that it wasn't fair. Then she asked me had I filed my return yet, and I said, "No, I was scared to death that this was going to happen, and sure enough, it did." And now it's up to $580. I filed my return—and by the way, I think you're Mr. Goodwin, aren't you?

Mr. MILLS. No.

Senator DECONCINI. This is Mr. Mills. Mr. Goodwin will be here.

PRIVACY ACT

Mrs. BRUNNER. I've subsequently received my return, and they did not deduct the amount. I don't know why, and I'm not asking

any questions at this point. I have not heard from them. They haven't really been rude to me, but they have been aggressive and it was so stated that they do have a working agreement with Government agencies. I realized that he owed in Cleveland when I was in the Anthony J. Sellza Building. See, we were—one was on the 7th floor and we were on the 26th floor. But I really think—oh, and she told me that they didn't have to honor the court order. And I said, "It doesn't make—it doesn't make him pay child support, does it?" And I said, "No, it doesn't make him pay child support." A lot of things, you know, don't make him do things. But I have no recourse, no answer.

I realy didn't know what to say to her, but she did say that they couldn't use any of the information that Social Security had gathered because of the Privacy Act. I mean, I had certain intuition into the situation, but that's kind of irrelevant to this. But it seems to boil down to the fact that I was the easiest one to find because I was a Government employee and I do pay my taxes. I don't owe anybody, et cetera.

ENFORCEABLE AGREEMENT

And I would like someone to answer why I have to pay this bill that's been so stipulated in the divorce decree through a court that he is to pay it. And I would—there's a small question under it. I have been raised, sir, with—I mean, I've had parking tickets, speeding tickets, et cetera. But why can one person—I know there's a lot of them out there—take a social security number that belongs to someone else and I have talked to various agencies from judges, Social Security Administration, et cetera—and use it, and they really don't know what to do with this person. They say it's against the law and that, but it just is a continuous question mark.

According to the Phoenix Police Department I can use your Visa card or your social security number as long as I pay my bills. There's no law against that. That's appalling.

Senator DECONCINI. Yes; I agree with you. Well, you asked a question that I'm not prepared to answer for you, and that involves some legal interpretations. I do know that when you're married it's a joint obligation.

Mrs. BRUNNER. Yes, sir, I realize that.

Senator DECONCINI. And I also know that between you and your husband, you have an enforceable agreement. Of course, it costs money to enforce those, and I hope that you can get reciprocial rights wherevever he may be located, that he would pay it. I also hope that the Internal Revenue Service would take heed to attempt to find the person who has at least obligated himself between you and a written contract and a judgment that that's who they should seek to get the money.

I suspect that legally, they can collect it from whomever was obligated at the time. Certainly I agree with you that they ought to go after the person who has agreed to take on that debt, if they know where the person is.

Mrs. BRUNNER. Yes, sir, they have been supplied with the address, et cetera. He's very difficult to find at that address, but he can be found. They found me. Of course, it's the aggravating fact—

Senator DECONCINI. Yes, I understand.

Mrs. BRUNNER [continuing]. That I am a Government employee.

Senator DECONCINI. Sure. They know where you are and they know that you paid your taxes, and it's easier for them to find you than it is to seek out this other person.

Mrs. BRUNNER. Yes, sir.

EFFORT TO COLLECT DEBT

Senator DECONCINI. Well, I think you make a very good point, Mrs. Brunner. The IRS ought to make an attempt to collect the debt from the person who has agreed to pay for it. If they cannot do that legally, of course, they have the right to come back to the other person.

But you point, I think, is that no effort has been made to collect it from him, your former husband?

Mrs. BRUNNER. Can I add to that, does that make the fact that I take the three children for life, invalid if he choses to do it? Do I have to take him back to court?

Senator DECONCINI. No, of course not. The divorce law in the enforcement of those agreements and judgments depend on where you try to enforce them, whether it's in Arizona or any other State. But a contract between you and your hushand is not binding on me.

Mrs. BRUNNER. No, sir.

Senator DECONCINI. Or the Federal Government for that matter.

Mrs. BRUNNER. No, sir.

Senator DECONCINI. But I think your point is well taken that if they know where your former husband is, that's where they ought to look to collect the money.

Mrs. BRUNNER. I believe there's been some correspondence between your office and the IRS Director regading this matter that someone substantiated.

Senator DECONCINI. Mrs. Myers says that we have been involved in working on the case, and I can't tell you exactly where it is, but we will continue to pursue that for you.

Mrs. BRUNNER. I do appreciate the work your office has done. It's rather frustrating, but——

Senator DECONCINI. Thank you very much.

Mrs. BRUNNER. Thank you for your time.

Senator DECONCINI. I have received some material from the Internal Revenue Services on the issue raised by Mrs. Martha Brunner. The material will be inserted in the record at this point.

[The material follows:]

Issue.—Mrs. Brunner feels that the Internal Revenue Service must only pursue collection against her former spouse because he has been ordered by a state court, divorce decree, to pay their joint tax liability.

Response.—In this case the witness filed a joint income tax return for the year of 1976 with her husband. In August of 1980 the tax return for 1976 was audited and additional tax and interest for $478.70 was charged. The proposed tax increase was agreed to by both individuals. The witness subsequently was divorced from Robert Brunner in September of 1980.

In the divorce decree the Lorain County, Ohio judge ordered that Robert Brunner "the defendant should pay any and all deficiencies to the Internal Revenue Service and shall save the Plaintiff harmless therefrom . . . ". The state divorce court deci-

sion only binds and controls the parties to the action, husband and wife. It does not bind or control any creditor whether it be a bank, individual, or the government.

The Internal Revenue code reads in part, "If a joint return is made, the tax on that return and the liability with respect to the tax shall be joint and several," i.e., binding equally on the persons signing the return. The Service recognizes that Mrs. Brunner's divorce settlement requires her former husband to pay the tax. However, as law, the Federal Statute, the Internal Revenue Code, is superior and we are required to seek payment from both parties. Our collection determination must be made on the individuals ability to pay without regard to a divorce decree. Mr. Brunner ha not been located despite attempts by our Cleveland, Ohio Office. Mrs. Brunner's financial statement indicates that she is not able to pay the tax due at this time and collection efforts directed toward her in Phoenix have been suspended.

Our file on this case has been forwarded to the Cleveland, Ohio District.

NOTE.—All of the information discussed above concerns the joint returns filed by Mr. and Mrs. Brunner. Mrs. Brunner signed a waiver authorizing the Internal Revenue Service to disclose *her* returns, return information, and taxpayer return information, for all tax years. Under IRC 6103(e)(1)(B), either taxpayer may consent to disclosure for both taxpayers filing a joint return.

STATEMENT OF CHARLES CADWELL

THIEVERY

Senator DECONCINI. Our next witness will be Charles Cadwell.

Mr. CADWELL. Senator DeConcini.

Senator DECONCINI. Mr. Cadwell, how are you today?

Mrs. CADWELL. A little nervous.

Senator DECONCINI. Don't be nervous. Nobody's going to hurt you. You're going to help us.

Mr. CADWELL. I hope you're going to help me.

Senator DECONCINI. You might help us with some information. Go ahead, sir.

Mr. CADWELL. All right. Thank you. In October of 1977, my ex-wife and ex-mother-in-law were charged with stealing of $80,000 from Greyhound Corp.

Senator DECONCINI. Excuse me. Can you pull that microphone a little closer? I didn't hear.

Mr. CADWELL. In October of 1977, my—she was my wife at the time, but—and mother-in-law were charged with the stealing of $80,000 from Greyhound Corp. Two weeks later, she walked out and took about $26,000 worth of furniture from the premises. At the same time, IRS stepped in and started to do their job.

In the superior court in the State of Arizona on July 13, 1978, an order of decree of dissolution in the—our marriage, she stated that I did not know anything about her stealing this money. Also, she stated that what she took out of the house was what the money was utilized for. I'm sorry.

Senator DECONCINI. It's all right. Take your time.

Mr. CADWELL. I'm getting nervous. OK. Also the court ordered the sale of the house and the money went to Greyhound Corp., about $6,000. At the same time, there was nothing about the division of debts. So it went into the upper court and asked the upper court to order the lower court to divide the debts.

EXCERPT FROM DIVORCE HEARING TRANSCRIPT

Now at this time, I'd like to read some of the transcript from the divorce which was held in the Superior Court of the State of Arizo-

na on June 14, 1978. This is mainly about IRS right off the bat here.

Question. Has IRS been in contact with you or your wife concerning the money that was appropriated from Greyhound or Armour/Dial?
Answer. Yes.

I was the person that was answering the questions at the time.

And is it—and is it to your desire that your wife be held liable for any tax liability?
Yes.
Have the IRS indicated to you that they are not looking to you for payment of the obligation?

And what happened, her attorney jumped in and said objection, and we go off.

Question. Okay. Who have you been discussing this with at IRS?
A gentleman named James Converse.
When did these discussions occur?
Approximately it started three months after she walked out.
Have you had any more than one conversation with this gentleman?
Yes.
Is he the investigator from IRS assigned to the case?
Yes.
Where do the discussions occur?
At the house.

"This is your understanding, and there is—she was—" Her attorney jumped in again and tried to block it. OK. Now right after lunch, I decided to hand over approximately $26,000 worth of furniture to her because she stated that this furniture was bought with stolen money.

"OK. Your Honor, Mr. Cadwell would like to change his position at this point in time. His position would be that all the furniture and items located in the home remain there. All the furniture and items located outside the home will remain with Mrs. Cadwell, and the other position is that everything stay the same as we originally went into court."

KNOWLEDGE OF THEFTS

Now a little bit further on in the testimony here, "But did you combine every—" This is basically questions about stealing the money, how it was utilized.

"But did you—but didn't you combine everything together? Didn't you put your 'rustled' money together in your checking account and get money orders with it?

"Some of it, not all of it."

I don't have anything else of this area. OK. The reason I brought this out, they took me into court, IRS, and it got completely changed around, which I'll present a little bit later.

"OK. In fairness to Mr. Cadwell, did you ever advise Mr. Cadwell of what you were doing in the period of time as far as the things that eventually led to these charges? Of course, the charges were stealing the money."

"He never asked me."

"But did you ever tell him?"

"I didn't out and out tell him. I sat down at different times, and I had discussions with him, but it didn't work out."

"The COURT. Please answer the question. The question was—"

"The WITNESS [Her]. No. OK. Now—"

Question. Did you ever tell Mr. Cadwell a falsehood about how you were acquiring those, in other words, different things? In other words, did you tell him they were a gift from your parents or any other falsehoods?"

"It's possible."

"OK. What is your request to the court concerning obligations of any obligations that may be due and owing the Internal Revenue Service?"

This is Gail. "I would like those to be split 50-50."

INNOCENT SPOUSE PROVISION

Now, I'd like to go on. About August 4, 1978, IRS came out with an answer. They put to me under—they put me under the Innocent Spouse provision. Then the IRS changed their mind and took me to court December 4, 1980, and charged me with $26,634 back taxes.

Now, I have here James Converse's report, and I must apologize for being very nervous. This is worse than going to court.

OK. This was sent to me August 4, 1978, and it's—I gather—it states "Internal Revenue Service District Director, Mr. and Mrs.—, Mr. Charles H. Cadwell, III, and Mrs. Gail E. Cadwell and my ex-home address."

In the report, it states everything, why he came to his conclusions. One thing I would like to read, "It is determined that under Public Law 91-679, the innocent spouse provisions are applicable to Charles Cadwell regarding the unreported income related to several penalties," and it goes on, and it breaks it down.

Now once the court has to find you under the innocent spouse provision. Waiting for an answer from the tax court, I got an amendment to the divorce decree that the respondent shall pay and hold the petitioner from any debt arising out of her relationship with Armour/Dial.

Now we sent this to the tax court October 30, 1981. I still got hung.

Senator DECONCINI. Pardon?

Mr. CADWELL. I still got hung out to dry. They still taxed me $26,000.

TAX COURT RULING

Senator DECONCINI. The Tax Court ruled that the Innocent Spouse clause didn't apply to you, is that what happened?

Mr. CADWELL. That is correct. They have charged me $26,634. That's without penalties or interest.

Senator DECONCINI. What basis did the Tax Court say that it didn't apply? Did they say anything, or did they just say it didn't apply?

Mr. CADWELL. OK. I'd like to read a portion of that also. OK. Judge Simpson—well, first of all, before we go to what he said, I'd like to say that we asked for a postponement before we walked into court. Judge Simpson said no. Then second, he says he didn't want to do the case. "Make a deal with IRS."

Senator DECONCINI. That's what he said to you?

Mr. CADWELL. No, I had my attorney with me.
Senator DECONCINI. That's what he said to your attorney?
Mr. CADWELL. Yes, sir, and you met him in Tucson, MacPherson.
Senator DECONCINI. Where was that? Here in Phoenix?
Mr. CADWELL. Yes, sir.
Senator DECONCINI. And the judge was who? Judge Simpson?

ACCUSATION OF THEFT

Mr. CADWELL. Simpson. OK. Some of the facts, the petitioner, Charles Cadwell, a resident of Phoenix, Ariz., at the time he filed his petition in this case, during 1975 and 1976, he was married to Gail E. Cadwell. They filed jointly, Federal income tax returns for such years with the Internal Revenue Service. Mr. and Mrs. Cadwell were married in 1973. In 1974, Mrs. Cadwell began working as a premium coordinator for Armour/Dial.

Now, my ex-wife and ex-mother-in-law were both accused of stealing this money and the co-conspirator was my ex-mother-in-law. Everything was basically being shipped to their house, 5929 East Mariposa. The third party which finally got involved, and I was very happy to see, was her dad. He's been claiming all along through the divorce, through testimony here that he knew nothing about this mess, and he had nothing to do with it. The money went—he is a contractor in this State. The money went through his business.

Now what happened there? OK. Now, Mrs. Cadwell became acquainted with a Don McCleary soon after she began working at Armour/Dial. OK. They have been trying to shift this whole deal to Don McCleary, which I had met once.

She had mentioned to me that she was thinking about going into business with him once. It was said to me. OK. The court recognized that Gail and I had a joint checking account, which I admitted in court and it states here by Mr.—excuse me, by Judge Simpson, he wrote the majority of the checks on the joint account, undertook the complete material necessary for preparing the tax return. My ex-wife forgot to mention, she also was with me when she went to the lady who prepared her tax. She claims in court she wasn't there.

OK. "Mr. Cadwell made deposits for the purchase of some of the furniture." Mr. DeConcini, my wife worked at Greyhound Towers. In that location, there is a branch of our bank. Every Thursday night, she received my paycheck and it was deposited.

Senator DECONCINI. Your paycheck?

PROBLEMS AT GREYHOUND CORP.

Mr. CADWELL. Yes. sir, and her paycheck. "Mr. Cadwell also accompanied his wife on visits to other attorneys brought in on the case when the serious nature of the matter appeared. What I meant—I'll explain this now. My wife came home one day, and she says she was having problems at Greyhound Corp., and that they were looking for Don McCleary because he stole the money. And I said well, the way it sounds. I think we better hire an attorney. We went to Lou Webb. She said—they talked. It wasn't a deep talk, if you know what I'm trying to drive at, where it's down to the nitty

gritty what the problem really was. She gave a general idea, and Lou said, "Fine, we'll take the case." And I said fine, so I left. And we both left together.

The next thing Lou said—told my wife he was going to bring in another attorney, a Doug McVay, and I met him and Lou once. And at that point, they wanted $10,000 to protect her, but nobody said why. Nobody would actually say why. There was a little trouble there. I offered both the attorneys an out, but—but they tried to push me into a corner, and I don't like to be pushed into a corner.

Senator DECONCINI. You said you did what to the attorney?

Mr. CADWELL. Offered them out. Take them into the back alley and have a fist fight.

Senator DECONCINI. OK. Sorry.

Mr. CADWELL. I'm not a college graduate, and I'm not an attorney.

Senator DECONCINI. You don't have to be a college graduate. I've been offered out before myself, too.

Mr. CADWELL. OK.

Senator DECONCINI. I try to stay away from those things. But I understand.

Mr. CADWELL. The main thing I want to bring out here, I don't know where the judge was. I really don't.

Senator DECONCINI. I don't either, from what you tell me here.

Mr. CADWELL. This is ridiculous. I swear to God, I wish—there's one more—OK. Then the divorce—now this is Simpson's opinion now.

DIVORCE PROCEEDING TESTIMONY

Then the divorce proceedings, "She gave inconsistent testimony, but in view of the other evidence, we are convinced that her testimony in this court is generally reliable." This is a convicted felon. Her mother's a convicted felon. Her father's lying to protect them and shift the blame back and taxes back on my back. Now that's what he put down. OK.

"Mr. Cadwell attempted to explain away his lack of knowledge of the additional income by testifying that he thought the Graces were giving them money while he was unemployed." I was unemployed for 6 months in 1975. I explained to them that my ex-wife told me of $1,600 that her parents were giving us. OK.

"* * * while he was unemployed, and that the home improvements and other items were also gifts from the Graces." I was putting paneling up. Her father—my parents sent me the $1,000 for the paneling. The Graces put—gave us the money for the mosaic tile floor. All of this was going through Mr. Grace's business, the money end of it, which is stolen.

You have to understand something. I didn't know all this——

Senator DECONCINI. Yes, I understand.

RECORDS OF ACCOUNTS

Mr. CADWELL [continuing]. What was going on. OK. "At the time Mr. Cadwell signed the Federal income tax return in 1975, he may not have known of the OK, I'll bypass that "agreement between his

wife and Don McCleary. However, Mr. Cadwell claimed that she had told him about her commissions," which is a lie, "the large bank deposits," which I can explain in just a minute, "and the substantial purchases of all" in other words, all he's saying is here's the money that was deposited into your bank account. Now what I'm going to say to you is I get—we gave a thing in writing that she took care of what came from the bank, the amount of money in the account to check the checks.

All right. I took care of the checkbook, my checkbook, which states Gail put in $800 every 2 weeks. I put in $300 every week, and that's the part I took care of and paid the bills like that. Now if they—you can hide money in a bank account. In other words, what I'm trying to say is one person can say, "I'll deposit $100 but I don't want to let him know. I'll keep my mouth shut and keep it up here." Then——

Senator DECONCINI. Doesn't that show up on the monthly statements?

Mr. CADWELL. Yes, but she was taking care of the monthly statements.

Senator DECONCINI. You didn't see them?

Mr. CADWELL. No, and the checks to correspond with that was being written. The money was being—the money that she was hiding did not go against the checks. It went against money orders.

Senator DECONCINI. Yes.

Mr. CADWELL. And the courts didn't bring that out either.

Senator DECONCINI. Is Mr. MacPherson still representing you?

APPEAL TO DECISION

Mr. CADWELL. Well, let me explain something. No, because I do not have $26,634 to take it to the next court.

Senator DECONCINI. For a bond?

Mr. CADWELL. For a bond. I still owe him $3,000. Now, I have found out through all this mess, she can bankrupt out, and I'm going to get stuck with this, and I can't believe this mess. I did not steal the money. I had no knowledge of it. They turned around and nailed me for it, even though James Converse, when he left the Service, they turned around and pulled a fast one on me.

I had him in court ready to testify. They would not let the man testify. They made a deal just before they walked into court, the Graces and the daughter. They made a deal. We couldn't enter into it. They had me right there, and I don't know. That's about all I have to say.

Senator DECONCINI. Well, Mr. Cadwell, I wish I could give you some answers or some hope.

RECOGNITION OF DIVORCE DECREE

Mr. CADWELL. Well, I have a divorce decree that isn't worth the paper it's written on. It took 4 years for that judge to come up with "You're not responsible or liable for anything she did," but it still isn't going to do me any good because these guys don't recognize it.

Senator DECONCINI. Right.

Mr. CADWELL. Then I have to go back into court and answer for the money that I—I took care of all the debts, lost my interest in

the house, plus this bit, plus $8,000 to "Mac," plus $3,000 to get divorced. If I have to go back into court and ask for all this, for her half under the community property law, she'll just turn around and walk into the bankruptcy court and walk out of it. Now what am I going to do?

BONDING AND SHARING LIABILITY

Senator DECONCINI. I can't ell you what you're going to do. I can only tell you that I can sympathize with the problem you have. I wish I had an answer for you. You certainly make a point that we ought to consider some changes in the law regarding the bond that would have to be put up and also as to the sharing of those liabilities that are incurred.

Mr. CADWELL. I agree. I think the State should also start doing their job, too.

Senator DECONCINI. Thank you, sir.

Mr. CADWELL. Why hold me responsible for one-half of $80,000? One-half of her attorney's fees, one—I mean, I'm sitting here for 4 years, sitting on $160,000 that she wants one-half of through me. The only reason she walked out was to railroad me into this deal. Now what am I going to do? It took 3 years for that judge. I'm getting gray hairs over this mess. This is going on since 1977. How many more—now, I don't know how many more years these guys are going to chase me. I don't have anything anymore. I lost——

LEGAL REMEDY

Senator DECONCINI. Have you sought legal counsel or advice from Mr. MacPherson on what other remedies there are?

Mr. CADWELL. The only remedy we have is to go into the ninth circuit court with a bond, and I don't have the money for a bond.

Senator DECONCINI. And he has no other advice for you?

Mr. CADWELL. No, because of the so-called IRS doesn't believe in State law or however you want to put it. There is no law between State and Federal.

Senator DECONCINI. No, I think that point's well made and is something that ought to be considered legislatively. But that's not going to help you. It may help somebody in the future if we change the law, but you certainly made a very good point in bringing forth the need to have that recognized by Federal agencies.

Mr. CADWELL. Thank you for your time.

Senator DECONCINI. Thank you. I wish I had some solution for you.

Mr. CADWELL. Well, maybe some day somebody will be brought into it and you can get out of it.

Senator DECONCINI. I have received some material from the IRS on an issue raised by Mr. Charles Cadwell III. The material will be inserted in the record at this point.

[The material follows:]

Issue.—Mr. Cadwell stated that he is an "innocent spouse" and should be entitled to relief from the income taxes on the embezzled monies. Mr. Cadwell stated that he received a letter from the District Director of Internal Revenue dated August 4, 1978, affirming Mr. Cadwell's status as an innocent spouse.

Response.—Charles Cadwell III and Gail E. Cadwell filed joint Federal income tax returns for the years 1975 and 1976. During 1975 and 1976 Mrs. Cadwell worked for

Armour-Dial, Inc., a subsidiary for the Greyhound Corporation, and entered into an arrangement, with several other individuals to embezzle monies from Armour. In a statutory notice of deficiency issued to Mr. and Mrs. Cadwell, it was determined that they had received unreported embezzlement income of $31,622.03 in 1975 and $52,185.70 in 1976. Mrs. Cadwell later entered into an agreement with the Internal Revenue Service in which she admitted receiving unreported income of $26,779.41 in 1975 and $38,101.82 in 1976. Mr. Cadwell has conceded that these amounts were omitted from their joint returns.

The original examination report of the 1975 and 1976 tax returns was transmitted to Mr. and Mrs. Cadwell on August 9, 1978, by the issuance of a 30-day letter which gave the Cadwells the opportunity to protest the findings to the Regional Appeals Office of the Internal Revenue Service. The report stated that the innocent spouse provisions were appliable to Charles Cadwell regarding the unreported income and related civil fraud penalties. Mr. and Mrs. Cadwell did not respond to the August 9, 1978, 30-Day Letter.

A statutory notice of deficiency, giving them the opportunity to petition the Tax Court for a redetermination of the tax, was prepared. Notices are reviewed by a District Counsel attorney for correct application of the tax laws prior to issuance. The District Counsel attorney recommended that the innocent spouse determination be re-examined since Mr. Cadwell appeared to receive substantial benefits from the embezzled funds and exercised substantially all control of the funds by record keeping of checking activity and payment of expenses. The examining officer re-examined the issue and adopted a position in agreement with Counsel. A notice of deficiency was sent to Mr. and Mrs. Cadwell on April 12, 1979, with the innocent spouse provision deleted. In addition to the proposed income tax deficiency, the civil fraud penalty was proposed for assessment against Mrs. Cadwell only.

Mr. and Mrs. Cadwell were subsequently divorced and Mrs. Cadwell entered into the unreported income settlement previously noted. Mr. Cadwell did not agree that he was liable for the tax and petitioned the United States Tax Court for a determination on his status as an innocent spouse. The Tax Court held that Mr. Cadwell did not qualify as an innocent spouse in either 1975 or 1976.

NOTE.—Mr. Cadwell signed a waiver authorizing the Internal Revenue Service to disclose his returns, return information, and taxpayer return information for all tax years.

STATEMENT OF MRS. MARTIN FREED

FILING OF RETURNS

Senator DECONCINI. The next witness will be Mrs. Martin Freed. Thank you, Mrs. Freed. Would you please sign a waiver here if you're going to talk about a specific case? Please go ahead, Mrs. Freed.

Mrs. FREED. OK. I'd just like to start introducing myself. I am Mrs. Martin Freed. I have taken care of this entire mess for my husband right along. We live in Mesa, Ariz., and I'd like to say before we get into this, that I have four children at home. And through all of this mess, I've had to arrange for the care of those children and have had to deal with a critical illness and lengthy hospitalization of my eldest child and deal with IRS.

The initial contact was made to me by a Linda Oden in September of 1981 asking why we had not filed our 1980 business returns. I explained to her that we had sold the business in August of 1980, and in September 1980, the escrow company which was handling the sale of the business was padlocked by the Arizona State Banking Commission for embezzlement, and everything was frozen. That matter was not cleared up until September 1981, and that our accountants had told us that our 1980 personal returns would be so large that it would not only pay the taxes owed on the business, but that we would actually have the difference of approximately a $600 net return.

Linda Oden, at that point, advised me that when the personal returns were completed, we should take them with the business returns to the Phoenix IRS office, and that they could actually settle the differences up between the two returns there on the spot. We went to the Phoenix office October 19. After 2 hours of waiting and being shuffled from person to person with four children with us, we spoke with a woman by the name of Irma, who flat refused to give us her last name. She said that she could file the returns, but could not settle the differences for us.

Now, we're still under what we find out is a mistake that we're going to get $600 back. We asked to speak with Linda Oden at that point, and we were told that she was at the Scottsdale office, but that she didn't have our case anymore; we had to call a Mr. Steve Wagner. He was out of his office until the end of October.

I called Mr. Wagner, and the soonest I could get an appointment to meet with him was December 24. I had to cancel and remake that appointment for December 29, due to illness.

NOTICES OF OBLIGATIONS

By then, I had received notices from IRS stating that I owed $8,361. I also received refund checks for our 1977 and 1978 carrybacks totaling $2,500. I took the checks, the notices, and the letters from the State Banking Commission to Mr. Wagner. I signed over the refund checks on the spot and explained to him again about the sale of the business and the escrow company being closed by the Arizona State Banking Commission. He said that the penalties and interest would probably be waived and that we would end up owing IRS approximately $2,000, but to wait, we would receive notification.

We received notices January 29, stating we owed $2,955. I called Mr. Wagner. He said that they must not have credited our account with the $2,500 that I signed over, but to avoid enforcement action, I had better call the person who signed this notice who was JoAnn Phipps, chief of collection branch, Boulder, Colo. I found this funny. You can't call Boulder, Colo. Mr. Wagner, who works for IRS, didn't know this.

So after spending half an hour arguing with an operator on the phone, I called Mr. Wagner back. So he suggested I write a letter explaining that for some reason, they hadn't credited us with the $2,500, and asking an agent to come to my home. I said fine, and he said, "Thank you. I can't do anything more for you."

I sent a registered letter February 4. I received a response dated February 25. The letter stated that my letter was being sent to the Phoenix IRS office for a reply. I received a letter dated March 29, 1982, stating that I had to appear with my tax records for the period ending September 1981. We went out of business in August of 1980.

TAPE RECORDING

I called Mr. Wagner again. He told me to call a phone number that gave me a tape recording. I talked to the tape recording. I told them we weren't in business in 1981. The tape recording told me that I would hear from an agent within 48 hours. If I did not re-

ceive a phone call within 48 hours, I could assume that the matter was resolved.

I did not receive a phone call. A full week after I called, I got two memos dated April 5. The first memo was asking for $4,200 owed on back taxes. The second memo was asking for the 941 forms for September 1981, March 1981, and June 1981, and the 940 form for December 1981. I called Mr. Wagner again. He told me to call Problem Resolutions.

PROBLEM RESOLUTIONS

Now mind you, this is 8 months since I first talked to Linda Oden. I talked with Pat Lynch at Problem Resolutions. I told her that we weren't in business in 1981. I told her that I had spoken with Mr. Wagner back in December and that he said we'd owe approximately $2,000, that there had been an error about the $2,500 that we had already paid, and that I had written a letter to this effect. She said she would look into it.

Approximately April 15, I received a phone call from IRS. The first thing the woman told me is that she can't discuss it with me because of the Privacy Act, and that the business was in my husband's name. And I said, "Fine. Don't ask the questions. I'll just give you the answers," and she talked to me. She informed me in the course of this conversation that we owed $4,200 to IRS. Of that, only $600 was taxes. The difference was all penalties and interest. I finally told her that I would be very happy to talk to anyone who had the authority to settle this. She tells me that her file shows absolutely no record of any communications by us with IRS. No phone calls, no letters, no copies of documents from the State Banking Commission. Absolutely nothing. Not even of their own letters they sent me.

She said there's no way we can get out of paying the $4,200. We owe it, and when are we going to pay it? I got really frustrated. At that point, I mentioned calling my Senator, and she immediately told me that a field representative would be in touch with me and hung up.

I called Senator DeConcini's office that afternoon. I went over to his office the following Tuesday. I also went to my bank and took a cash advance on a credit card for $600 and sent it certified registered to IRS, since that's what they told me I owed.

REQUEST FOR INVESTIGATION

The Senator's office sent a letter to IRS notifying them that I had requested an investigation. Mr. Wagner called me the first week in May. He wanted to make an appointment to come to my home at my convenience to settle this matter. He came out on May 10 at 10 a.m. He agreed to drop the interest from September 1980, to September 1981. That was the period of time that the Arizona State Banking Commission had a freeze on all credits and debits as related to our business.

He agreed to drop the late filing penalties because we received bad advice from our accountant. He would not drop the interest from October 1981, until May 10, 1982. Mr. Wagner told me that if I had only paid the taxes at any time over the last 8 months, the

interest would have stopped accruing. Unfortunately, I didn't know that and I didn't know exactly what I owed. As a matter of fact, I didn't even know approximately what I owed.

INTIMIDATION AND THREATS

Mr. Wagner first told me that no one had been assigned to the case. That was the reason that nothing was done. Then later he told me that he took the case away from somebody else and that now it would be taken care of properly. He also informed me that the interest amount for the last 8 months didn't matter because even if I had the money that I owed in December, I couldn't afford to pay it. I would like to add that there were four different business returns involved in this mess. Other than the memo which was dated April 5, all of the accounts and amounts were never documented at the same time. At the most, at any one time I would receive notices of three out of four of the accounts.

I would like to end this with one question and—two questions and one statement. I would like to know how IRS can charge interest for the privilege of being shuffled from one person or department to another, and I really thought Government employees were public employees paid by our tax dollars. What gives them the right or authority to intimidate and threaten me when I've been trying to pay my taxes?

And third of all, I have to say that no private sector industry could ever treat the public in this manner and not literally be run out of town.

Senator DECONCINI. Mrs. Freed, thank you for being a witness today. I think you will get some answers to those questions, and I intend to help you pursue that with the IRS. I know we're already involved in your case. I think it's outrageous. Obviously——

Mrs. FREED. I can't believe we were shuffled back and forth.

Senator DECONCINI. I can't either. I'm sure we'll get some answers, and I can assure you that I'm not going to let the case just slide away without knowing why Mr. Wagner is still employed there if, in fact, he has no better answers than what your testimony has.

I only want to say to you that someone who has taken the time that you have to document this is very helpful to us. I'm sure you're about ready to pull your hair out and have nothing to do with anyone in the Government. But when someone takes the time to prepare a case as you have, and I know from a little bit from our own file, this is very helpful to demonstrate that government does not in many cases serve the public, that they serve themselves. And I intend to use your case, now that you've signed a waiver, and if you have no objections, as an example of the very worst in public service.

I'm outraged by that type of activity. I'm outraged by anyone who feels intimidated or hurt by their Government. So often we don't have the facts clear the day before as you have demonstrated with copies of letters, dates, people's names and addresses and telephone numbers. I believe we will find something very positive. I hope that the IRS representatives here will take it very seriously of what I intend to do about this case mainly because you had the

courage to step forward with a fine presentation and with the exact dates and the specifics that will help us immensely. Thank you.

Mrs. FREED. Thank you.

Senator DECONCINI. I have received some material on an issue raised by Mrs. Martin Freed. The material will be inserted in the record at this point.

[The material follows:]

Issue.—Mr. Martin Freed was doing business as Pioneer Takeout #178 in Mesa, Arizona. He closed his business in August of 1980. In September, 1980, the escrow company handling the sale of the business was padlocked by the Arizona State Banking Commission for embezzlement. Mrs. Freed tried very hard to settle both business and personal accounts with the Internal Revenue Service. The Internal Revenue Service was unable to consolidate eight different business and personal tax accounts over a period of some ten months. During this entire period, Mrs. Freed sought help and was attempting to file all tax returns that were due on both the personal and business accounts and pay the appropriate tax due.

Response.—Specific dates and names of employees are used in our response to the extent that recordation was made.

In September of 1981, Mr. and Mrs. Freed were contacted by a Revenue Officer as a result of an internal check that indicated several business and individual tax returns had not been filed or paid.

As a result of our contact, the Freeds filed, but did not pay, four business tax returns, their personal income tax return for 1980, and Forms 1045, Application For Tentative Refund From Carryback Of Net Operating Loss Or Unused Investment Credit, for 1977 and 1978. These returns were filed on October 19, 1981.

The processing of the delinquent business and personal tax returns resulted in the issuance of numerous subsequent billings with regard to each of these accounts. Notices of tax due, included interest and penalty charges on the four business accounts, were mailed to the Freeds on three separate occasions, December 15, 1981, January 29, 1982, and February 26, 1982.

During this period of approximately 20 weeks the Freeds did not respond to any of the notices nor make any payments on the accounts. Mrs. Freed contends that she never responded because a consolidated notice covering all five accounts was not mailed to her. The Internal Revenue Service does not send consolidated notices since each tax year and entity is considered a separate item.

On December 29, 1981, Mrs. Freed brought two refund checks issued as a result of the tentative carryback losses, totaling $2,559.92, to be applied to the business balance due accounts. At that time, she indicated that she was unable to pay the remaining balance due in a lump sum.

In March of 1982, after the issuance of the four notices referred to above, taxpayer delinquent account referrals were sent to the Phoenix District Office to collect. These taxpayer delinquent accounts covered Forms 941, for Employment Taxes, on quarters ending June 30, 1980, and September 30, 1980, and Forms 940, Unemployment Taxes for years ending December 31, 1979, and December 31, 1980.

On April 5, 1982, a representative from the Office Collection staff mailed Mrs. Freed a consolidated statement covering all accounts due. Later, on April 8, 1982, Mrs. Freed contacted the Problem Resolution Office requesting assistance and a breakdown of the remaining balances due. Since the accounts were in a taxpayer delinquent status, the case was controlled as a problem resolution case and referred to the Collective Division for action and response. As a result of this referral, Mrs. Freed was contacted by Office Branch, of the Collection Division, on April 15, 1982. This conversation resulted in the case being transferred to a revenue officer to comply with Mrs. Freed's request that someone come to her home to discuss the accounts. The responsibility for the accounts in the city of Mesa, where the Freeds live, belongs to the Scottsdale Office; therefore, this office received the delinquent account files and assigned a revenue officer to the case.

This scheduled appointment between Mrs. Freed and Revenue Officer Steve Wagner took place on May 10, 1982. At this time, Mr. Wagner gave Mrs. Freed a breakdown of all the taxes owed. Since the Freeds' records had been impounded due to the legal proceedings the State Banking Commission had taken against the escrow company, Mr. Wagner recommended that the penalties be waived. The penalties for failure to file, failure to pay, and failure to deposit taxes timely can be waived under Internal Revenue Code Section 6651(a)(2) for reasonable cause.

Subsequently, Mr. Wagner sent the request to be processed which would negate all penalties on the business accounts. Mr. Wagner also placed a hold on the individ-

ual account which would result in the automatic transfer of any credits from the individual account to the balance due business accounts.

On June 1, 1982, after the initial request for adjustment of penalties was rejected for technical corrections, Mr. Wagner resubmitted the necessary documents to negate the penalities. In July, after all processing was completed, the penalties were removed from the account, leaving an interest assessment of $310.74 as a balance due.

The Problem Resolution Office, on July 8, 1982, notified Mrs. Freed of this $310.74 interest balance due. Mrs. Freed was also advised the interest assessment was in compliance with Section 6601 of the Internal Revenue Code which states that interest is mandatory and cannot be waived for reasonable cause. The accounts are now paid in full.

We regret the inconvenience and delay in properly settling these accounts.

NOTE.—Mrs. Freed signed a waiver authorizing the Internal Revenue Service to disclose her returns, return information, and taxpayer return information, for all tax years.

STATEMENT OF EUGENE MANDEL

AUDITING OF TAX RETURNS

Senator DECONCINI. Our next witness will be Eugene Mandel. OK, Mr. Mandel.

Mr. MANDEL. Thank you for hearing me today. I never had any problem with the IRS. I started working in World War II, the U.S. Navy from World War II, and in 1945, I graduated from college. I started working and never had a problem with IRS. Then after an amount of time, everything was fine and I was investigated. In 1973, I became disabled and I had to retire from work.

And in 1976, they started to question my tax returns. In 1976, there was no penalty. In 1977, there was a big $55 penalty. In 1978, no penalty, and 1979, no penalty. But they audited me 4 years in a row. And at the end of 1979, they—I even have the letter here—it says:

> We are pleased to tell you that our examination of your tax returns from the above period show no changes as required in the tax report. Your returns are accepted as filed. If you have any questions, please contact the person's name and telephone number as shown above. Thank you for your cooperation.

It's signed by someone here in Phoenix. I can't read his name. Looks like Heinz to me, but I can't tell.

They told my accountant because I couldn't go. I was in the hospital. And they told my accountant that everything was fine. They wouldn't have to audit me anymore. Two weeks later, they got another letter in 1980. It's scheduled for July 27 for this year. And my accountant is going to have to look into it. I refuse to take any more harassment and the trauma they've caused me and upset me. They have repeatedly asked for the same thing over and over again.

I have paid tremendous medical bills. They have all been satisfied. They have not found anything wrong with my medical bills. In 4 four years, they have only charged me $55 in penalties. It was a mistake that my accountant said he made, and which I—I really—he's been my accountant for 30 years. That was back in Illinois. I moved here since then, and I have a new accountant. He went for 1979, and he's going to go for 1980 for me again. They just don't let up, and I keep getting the same requests, and they're always satisfied.

They always come back for the following year again. That's it. Short and sweet. Not sweet, but it's short.

COST IN ANSWERING AUDIT REQUESTS

Senator DECONCINI. Mr. Mandel, do you have any rough estimates you could share with us as to how much you've had to spend in accountant fees, attorney fees and so forth in answering these audit requests?

Mr. MANDEL. Between $60 and $75 an hour, and it's cost me a little over $1,500 in the past years just in monetary. I don't know about my health and the harassment. There's no money—you can't put a dollar value on that at all.

Senator DECONCINI. It's my understanding that you've undergone heart transplant surgery; is that correct, a year ago?

Mr. MANDEL. Well, in March 1981, I was No. 12 at the University of Arizona Hospital. I'm the oldest one that's ever had a heart transplant in this State.

Senator DECONCINI. Is that right? And you've had continued cardiac problems?

Mr. MANDEL. Prior to that, I had three cardiac arrests. It will be 13 years since the first one, then the three open heart surgeries where they've totaled a total of five bypasses and removed an aneurysm and a blood clot from the heart.

Then in March 1981, I had a transplant out at the University of Arizona.

MEDICAL EXPENSES

Senator DECONCINI. And are you also being questioned as to your medical expenses?

Mr. MANDEL. I sure am.

Senator DECONCINI. And what is the status of that? Is that being audited right now?

Mr. MANDEL. Because of me being in the hospital, I had to get an extension. I have till June 15. The accountant now has everything, and the tax will be filed this week with the late charge.

PROBLEM RESOLUTION OFFICE

Senator DECONCINI. Have you or your accountant called the Problem Resolution Office, do you know?

Mr. MANDEL. I don't know. But he's—my accountant back in Illinois first called them, and this accountant has done the same thing. In fact, he told them I had a heart transplant when he was in there in January.

Senator DECONCINI. The Internal Revenue Commissioner and the Director who testified have taken great pride in that, and we've had some professional testimony here indicating that they do indeed intercede and sometimes solve some of these problems. I would recommend that you be sure that your auditor or accountant talk to that office.

Mr. MANDEL. Which office is that, Senator?

Senator DECONCINI. That's called the Problem Resolution Office at the IRS here. We might have contacted them. I don't know. But I would ceretainly want you to do it.

Mr. MANDEL. I will.

Senator DECONCINI. If it's as good as they say it is, there ought to be some relief for you. Thank you.

Mr. MANDEL. I hope so, because I want them off my back once and for all.

Senator DECONCINI. Thank you, sir.

I have received some material from the Internal Revenue Service relating to an issue raised by Mr. Eugene J. Mandel. The material will be inserted in the record at this point.

[The material follows:]

Issue.—Mr. Mandel stated that he has been the subject of an excessive number of examinations starting with the year 1976 and that examination results have been small deficiencies or no-change in liability.

Response.—Service records show that Mr. Mandel's return for the year 1975 was examined and a deficiency of $233.72 was determined; for the year 1976 the examination resulted in a deficiency of $55.00 and for the year 1979 the examination resulted in a no-change report. The 1977 and 1978 years were not examined. The Kansas City Service Center made an adjustment to the 1978 tax computation based on a missing minimum tax schedule when the return was filed.

Mr. Mandel's 1980 Federal income tax return was selected for examination based on the computer program that identifies returns which have potential for error. The return reflects total income of $32,089.00. The issues selected for examination were: Gross Income; Capital Gains and Losses as shown on Schedule D, Non-Business Bad Debt of $1,500.00; Gain on Sale of Residence of $2,024.00; Casualty Loss of $960.00 from the theft of a gold bracelet; Alimony Payments of $18,611.00; and Medical Expense Deduction of $6,094.00.

A letter was sent to Mr. Mandel requesting he contact the Phoenix office to arrange an office interview examination. An appointment was scheduled for April 27, 1982. Subsequent to this contact, the appointment was rescheduled for July 27, 1982.

The Internal Revenue Service has no desire to examine returns not clearly in need of examination, except in the case of special studies such as the Taxpayer Compliance Measure Program. The Service has a policy not to examine a subsequent year return when the taxpayer has been examined in the same issues within the two preceding years with no material charge to tax liability. Examiners are provided with specific instructions for repetitive examinations. However, Mr. Mandel did not raise the question of repetitive examinations at any time during the scheduling of these appointments.

As a result of the hearing, the District requested Mr. Mandel's 1978 and 1979 Federal income tax returns to determine if the repetitive examination procedures would apply. Gross Income, Capital Gains and Losses on Schedule D and the Casualty or Theft Loss would not qualify as repetitive issues. Medical expenses were not an issue in the prior 1979 examination and would be subject to examination. The Alimony Deduction would not be examined.

NOTE.—Mr. Mandel signed a waiver authorizing the Internal Revenue Service to disclose his returns, return information, and taxpayer return information, for all tax years.

STATEMENT OF SANDRA STEPHENSON

FALSE CLAIM

Senator DECONCINI. Our next witness will be Sandra Stevenson.

Mrs. STEVENSON. Do I have to sign one of those?

Senator DECONCINI. Yes, Mrs. Stevenson, if you would sign a waiver, please?

Mrs. Stevenson, please proceed.

Mrs. STEVENSON. I was told to come here today by Judy Lieb.

Senator DECONCINI. Judy is here.

Mrs. STEVENSON. She is. OK. I'm glad. In 1979, my husband and I separated. He filed a claim. His tax attorney's secretary signed my name. I was advised by my attorney to notify the IRS a false claim had been filed. I did. They told me that there was nothing they could do, but if I signed the check when it was returned to us, that I could be held for fraud. Well, my attorney still has the check. So then I got a notice that we owed them $800 and some odd. I don't know where my ex-husband's at. He has stolen my children. They will not apply the $300 some-odd check that my attorney's holding toward this tax. I paid the tax of this year. I got a letter from them yesterday. I've paid them.

PROCESSING REFUND

They said they will not process my refund until they make sure that I don't owe them any more money. Now, I don't really have that much more to say because——

PROBLEM RESOLUTION OFFICE

Senator DECONCINI. Have you contacted the Problem Resolution Office? That sounds like a great case for them.

Mrs. STEVENSON. Yeah, they just wanted $831.41.

Senator DECONCINI. Is that what they told you?

Mrs. STEVENSON. Yeah, that's what I paid them, that I didn't want to give them because it wasn't my taxes as far as I was concerned, and I still don't understand why they wouldn't apply the $350. They wouldn't discuss it. They said it was a dead issue.

Senator DECONCINI. That's a very valid question. Why did they say it was a dead issue? Did they give you any reason?

Mrs. STEVENSON. This was a 1977 return. They won't talk about it.

Senator DECONCINI. We'll ask them that question for you.

Mrs. STEVENSON. Pardon me?

Senator DECONCINI. We'll ask them that question for you.

Mrs. STEVENSON. I hope so.

Senator DECONCINI. Thank you. I'm sorry that's happened to you.

I have received some material from the Internal Revenue Service on an issue raised by Ms. Sandra Stephenson. the material will be inserted in the record at this point.

[The material follows:]

Issue.—Mrs. Stephenson feels that the Internal Revenue Service should pursue collection of taxes from her ex-husband. Mrs. Stephenson would also like to know why she has not received her 1981 income tax refund and why a $350.00 refund check, her attorney is holding, could not be applied to the account.

Response.—A joint 1977 income tax return was filed by Mr. and Mrs. Stephenson. Subsequently, an examination resulted in $647.08 additional tax and interest being charged.

The Internal Revenue Code Section 6013(d)(3) reads in part, "if a joint return is made, the tax on that return and the liability with respect to the tax shall be joint and several, i.e., equally binding on the parties signing the return. Therefore, our Collection Division sought payment from both Mr. and Mrs. Stephenson for the additional taxes due. We were not able to locate Mr. Stephenson. Mrs. Stephenson was contacted and it was determined that she did not have the ability to pay at that time. Later, on April 15, 1982, Mrs. Stephenson submitted full payment on the account.

Our records do not reflect the issuance of a refund check for approximately $350.00 from either Mrs. Stephenson's 1979, 1980, 1981, or the joint 1977 accounts. Mrs. Stephenson's 1981 refund of $449.96 was finally issued to her June 18, 1982, subsequent to her airing of these issued at the hearing. Our attempts to resolve other issues in this case have been impeded by our inability to locate Mrs. Stephenson. Senator DeConcini's office has been notified of this, and has also been unable to locate Mrs. Stephenson.

NOTE.—Mrs. Stephenson signed a waiver authorizing the Internal Reveue Service to disclose her returns, return information, and taxpayer return information, for all tax years.

STATEMENT OF MRS. THOMAS WADE

DISALLOWANCE OF CLAIMS

Senator DECONCINI. Our last witness is Mrs. Thomas Wade.

Mrs. WADE. I knew you'd do that to me, put me last. What can I say after all this. Well.

Ms. MYERS. Well, that's what you get for having a name that starts with "W".

Mrs. WADE. That's what my daughter said. You should have said Bell. This morning we went over the construction man's plight quite well. I don't think we'll go over the whole thing. You understand the whole thing, and I think most people do.

My husband was in Saint John's, and he was there all of 1979, and into 1980. And well, I guess 1979, 1980, and until April of 1981. So it was a little over 2 years. We claimed deductions on our 1979 income tax, and we claimed them on 1980 because we sent in the 1980 before we got the notice that we were being audited on the 1979. So they said that none of those deductions were allowable because it was not a temporary job. Anything—now, this is at the audit.

The auditor told us that those were not allowable because he was there over a year, and the IRS considers if you are there over a year, that is your tax home. Great.

OK. Then I appealed. We went to the appeals court and, of course, that's after we read the beautiful article where Arizona construction men have their day in court. They all went and all lost. We told the appeals man, and we said temporary? He was there 2 years. What do you consider—you know, what's this year bit? You mean if he had been there 11½ months, it would have been all right? He wouldn't have—he would have been able to claim everything?

OVER-THE-YEAR RULE

He says oh, no, it isn't the year. It's whether the job is temporary or not. OK. Then we get the notice we're being audited for 1980. We go back to the auditor. The auditor again tells us it's the over-the-year rule.

Now we don't know where we stand except that we owe the Government $1,300. They say this has been since March of 1981. So far, we have not gotten a bill, including the penalties and interest, so we don't know what we owe, which we can't pay anyway because in the last 30 months, my husband has worked 11 months. We don't have any money.

Now, maybe we could pull something like Henry Kaiser did in 1947. Can we pay off 10 cents on the dollar? I'll do that. He can do it. He had lots of money. Why can't we? Why can't we little people do that?

DEFINITION OF "TEMPORARY"

Now, the other point—let's get to "temporary." I'd like to quote from Webster's New World Dictionary of the American Language, College Edition, the definition of "temporary". "Lasting, enjoyed, used and so forth for a time only. Not permanent. Temporary applies to a post held or to the person holding such a post for a limited time subject to dismissal by those having the power of appointment."

Now, every construction man's job in the field is "temporary". We went through that this morning. If you're going to construct something, when it's built, you're out of a job. You work yourself out of a job. Now all I can say is I believe those deductions should be allowed. The big flap over what you guys voted yourself last November, I don't really thing the amount is unfair. But I don't think that you are not entitled to a deduction. I think any person, any man that leaves his home in order to do a job, whether he has to or whether he is elected, doesn't make any difference.

If he leaves his home, leaves his family behind in a home State and goes to Washington or goes to Saint John's or wherever it is, I think he should be allowed his lodging, his food and his mileage at least. Now, they say well, why don't the construction men move their families? Now, what if the wife is working? What if the children are in school? In my case, I had a business to run. We can't pick up and go after our husbands. Even if we could, we would have to clear our houses to rent them out or sell them. Maybe we don't want to sell our homes because we know these jobs are temporary.

Now, I think this morning, some kind of a compromise—at least everybody said they would look into it.

Senator DECONCINI. Well, we're going to look into it. There is also legislation pending. As you know, I'm cosponsor of a bill that will attempt to clarify that. The bill is hung up in the Finance Committee. I don't intend to let it lie there, even though I'm not on that committee. There are other places that that legislation might have an opportunity to go. I agree with you completely. I'm hopeful that the Internal Revenue Service will at least take another look at it.

I would much rather see it changed administratively, if possible.

DOUBLE TAXATION

Mrs. WADE. Don't you think that's double taxation?

Senator DECONCINI. Oh, I agree with you.

Mrs. WADE. If Saint John's was your tax home because we've filed jointly, what is your Phoenix home?

Senator DECONCINI. I agree with you.

Mrs. WADE. That's double taxation.

Senator DECONCINI. As far as the reference you made to the congressional tax break, most congressional people do move their fami-

lies to Washington, and that's why I opposed it. I didn't think it was right when you move yourself and your family.

Mrs. WADE. Well, I didn't understand last year you were allowed $3,000. That's not much. Not at all because I ran over $6,000 and we're not in your position at all.

Senator DECONCINI. But on the other hand, you know, our families live there with us.

Mrs. WADE. Yes.

Senator DECONCINI. And you're not entitled to expenses when you're living with your family.

Mrs. WADE. Right, right. Well, we weren't able to take anything off for our Phoenix one nor Saint John's, which to me is double taxation.

OK. Now, I can't say much more because most of these people have said the very things I was. I do want to comment on the previous lady that mentioned—to my knowledge, we public elect you people, and we pay your salaries. And therefore, you are our employees.

Now, you employees ask us so-called bosses to tell us—tell you what we do with our money, how we spend it and you say, oh, no, you can't do that. You can do this.

Now, why don't our employees allow us the same privilege? You give us 4 months after—not you, sir, but you know who I'm talking about—you give us 4 months after the end of the year to get all our goodies together or what we spend our money on. Now, I'll give you the same break. When does the fiscal year end? July?

Senator DECONCINI. September 30.

GRANTS

Mrs. WADE. How come January 15, our employees don't have to publish in every newspaper in this country how you spend your money and we can say you can't spend it on this; you can't spend it on that. Could I give a few examples, such as grants?

Let's see. We had over $12 million over the last 5 years, such things as $12,347 for 2,000 annual subscriptions to Washington Weekly Newsletter, $420,000 for the improvement of the postsecondary education; $41,000 to a feminist group to produce the all nude leaping lesbian follies. I could care less; $396,000 grant to study a grant. OK.

CONSULTANTS

OK. Then we'll go to consultants, and I know you know about that because I have your little article back here somewhere tucked in. Let's see. Consultants, yes. Senator DeConcini said that the Office of Management and Budget has reported that Government agencies in 1981 spent $3.7 billion. Oh, I got a lot of them listed here, too. The FCC spent $90,000 on a private outfit to find offices for them, new offices. I thought that was GSA's job.

OK. The Department of Agriculture spent $46,000 on how long it took to cook popular breakfast foods as opposed to unpopular breakfast foods. OK. Gymnasiums. You look in pretty good shape. Do you use that gym?

Senator DECONCINI. No, I don't use that gym, but it's there.

Mrs. WADE. You can.

Senator DECONCINI. I jog.

Mrs. WADE. Nobody else can.

Senator DECONCINI. I jog instead.

Mrs. WADE. Well, let's see. That costs us $212,000 annually.

Senator DECONCINI. It probably costs more than that.

Mrs. WADE. Well, that's conservative, but I'll tell you what, my husband comes home tired from work a lot of times because he's in construction. There isn't anybody there to rub his back, no pool.

Senator DECONCINI. Nor mine.

PENSIONS

Mrs. WADE. Right. OK. We are paying pensions to dead bureaucrats. One, we paid $81,952, and he's been dead for 16 years. You know, I think most sensible Americans know that we have to pay taxes. It's necessary, if we want our schools, our roads, or libraries, law enforcement, fire department, so forth. It's necessary. And I don't think we object to paying them.

WASTE AND ABUSES

But we do object to being ripped off. Now, where do we go? You're heard them all say they were in court. We were in court, too, when we went to the appeals. He showed us the stack that substantiated the article that I have of all the Arizona construction men with their day in court. OK. Now what sense was there in going on to another court when you knew it would be thrown out? We didn't have the money to do it anyway, just as many people testifying.

OK. You're aware, of course, that the Constitution was written by criminals. Are you? People that fled Europe because of excessive taxation, taxation without representation? We're going to become a nation of criminals. If the power people don't realize what they're doing to us little people, we're all going to revolt. You're going to kill the goose that lays the golden egg, and we're all going to revolt and all become criminals when we really don't want to.

But where can we go? We can't get a new land. There isn't any. So that's all I have to say.

Senator DECONCINI. Mrs. Wade, thank you. Your comments regarding the waste and abuses there are well taken. I've done some work in that area myself.

Mrs. WADE. I have a whole notebook full.

Senator DECONCINI. Of course, there is Senator Proxmire and his Golden Fleece Award. Many of those have been awarded those golden fleeces. There seems to be almost an inability to grab hold of these wastes. There certainly was inability just 2 weeks ago when I offered an amendment to increase the amount of cuts in public relations, of stopping some of the waste in Government. It was turned down on the Senate floor. We only got 42 votes for that——

Mrs. WADE. Uh huh.

EFFORTS TO CONTROL WASTE

Senator DECONCINI. I tried to cut back in those areas $6.9 billion for the 3 years, and there didn't seem to be enough interest to do it last week. The only encouraging thing I can tell you is that maybe there's a message getting through to Congress, at least in the Senate. For the fourth time Senator Armstrong, Senator Proximre, and myself tried to repeal that tax break that was given to Congress, and we did, at least on the Senate side.

Mrs. WADE. Yes; but where was it "tacked"?

Senator DECONCINI. Seventy Senators were willing to do it.

Mrs. WADE. What bill is it tacked to?

Senator DECONCINI. It's tacked on to the urgent supplemental bill.

Mrs. WADE. Which President Reagan said he will veto.

Senator DECONCINI. Yes; he might.

Mrs. WADE. So, there it is.

Senator DECONCINI. The point I want to make is some of us would like to see some of these things corrected.

Mrs. WADE. I believe you. In fact, it mentioned in one of these where you did not take your deduction.

Senator DECONCINI. No; I did not. And I do want to call your attention that we have received hundreds of signatures regarding S. 1342, which deals with the temporary worker issue that you've brought up. We have that as part of the permanent file here to demonstrate the public support for this position, and hopefully it will help us when we try to argue this and get this passed on the Senate floor.

I'm hopeful we can do it administratively. I thank you for your time.

FEDERAL LABOR RELATIONS AUTHORITY EXPENDITURES

Mrs. WADE. I have just one more little comment from this morning's paper, "Cheers and Jeers," again. You've been in there. You know that.

Jeers to the Federal Labor Relations Authority, whose top members spent $266,000 for plush office furniture in the face of a White House prohibition on such stuff, then laid off 47 employees to cut costs.

Thank you.

Senator DECONCINI. I guess I should know a little bit about that case. I exposed that one myself. We appreciate the frustrations you have. I'm sure the frame of mind you're in, you don't think you're listened to, but some of us attempt to make an effort to listen to the constituencies and make some changes.

I have received some material from the Internal Revenue Service relating to an issue raised by Mrs. Thomas Wade. The material will be inserted in the record at this point.

[The material follows:]

Issue.—Mrs. Wade raised two areas of concern. The first involves the validity of the disallowance of deductions claimed on their 1979 and 1980 tax returns as employee business expenses. The second questions the delay in assessing and billing additional taxes as adjusted and accepted by the taxpayers upon completion of the examinations.

Response.—Thomas Wade is a sheet metal worker who obtains employment through the union. From June 1978 to April 1980, Mr. Wade worked on the con-

struction of the electric power generating plant at St. Johns, Arizona. This plant is projected to take several more years to complete.

Under the Internal Revenue Code, travel expenses are deductible only if Mr. Wade is away from his tax home and working at a temporary job location. The court has held that employment is temporary if its termination within a short period can be foreseen; similarly, employment is considered indefinite if its termination within a fixed or reasonably short period of time cannot be foreseen.

The $6,775.00 was disallowed as employee business expenses on the 1979 return since it was determined that Mr. Wade was working on an indefinite assignment, and he was, therefore, not away from his tax home. For 1980, an adjustment of $2,965.000 was made due to the determination that the employment was not temporary, and $4,263.00 was allowed for expenses incurred while the taxpayer worked on temporary sites in Page and Prescott, Arizona.

The Wades did not agree with the tax auditor's findings and asked for a hearing before the Regional Appeals Office. The Appeals Office affirmed the position of the tax auditor and stated that the Tax Court had held that this type of employment at the same plant is indefinite rather than temporary and does not qualify as a deduction.

In response to Mrs. Wade's question of delay in assessing and billing the additional taxes, the examination of the taxpayer's 1979 return was completed on July 2, 1981. On November 20, 1981, at the conclusion of the appeals hearing, the taxpayer signed an agreement. The examination of the taxpayers' 1980 return was completed by the Examination Division on February 15, 1982, at which time they signed an agreement. Due to processing delays, these deficiencies have not been assessed as of this date.

The accrual of interest on additional taxes ends thirty days after receipt of the taxpayer's signature in agreement to the adjustments. Although the amount of time between closure of the case and billing has been lengthy, it has been of no monetary detriment to the taxpayer.

The delay in this case was caused by a heavy volume of work and a small staff.

NOTE.—All of the information discussed above concerns the *joint* returns filed by Mr. and Mrs. Wade. Mrs. Wade signed a waiver authorizing the Internal Revenue Service to disclose *her* returns, return information, and taxpayer return information, for all tax years. Under IRC 6103(e)(1)(B), either taxpayer may consent to disclosure for both taxpayers filing a joint return.

EXPRESSIONS OF APPRECIATION

Senator DECONCINI. I want to close the hearings at this time. I think these reading have been constructive for the most part. I realize people's anxiety and frustrations are as high as mine. We have a democratic process, and we are not in a revolutionary stage yet. I think the challenge is to try to change the country and the laws so that we don't have to go through that struggle. I'm an optimist. I think we can do it.

I thank the Internal Revenue Service for sitting here today and listening to this. I'm sure you learned something and can make some constructive measures. I thank the citizens who came forward for being willing to substantiate their particular problems that they've had with the Internal Revenue Service. I thank them for the time that they've put in, their patience, and I hope they will continue to work with us.

I want to thank Margot Myers on my left and my staff people who have spent a great deal of time, overtime at no extra pay to put these hearings together and to work on some of these cases. Also I want to thank Mr. Mills on my right, who is from Washington, who works on the Appropriations Committee and is the staff director for the minority.

NEW TAX SYSTEMS

We will continue to pursue these issues and hopefully find some time to hold some additional public forums where we can have public input on problems and ideas. To me, it demonstrates a couple of things. No. 1, before we do make criminals out of most American taxpayers, we better address the problem of some new type of tax system. I've offered a flat-rate tax. Maybe there's a better idea. I think it's important that we straighten our own house out and we do so very, very soon.

CONCLUSION OF HEARINGS

This concludes the hearing and with that, the subcommittee will stand in recess subject to call of the Chair. Thank you very much.

[The hearings were concluded and the subcommittee was recessed to reconvence at the call of the Chair.]

MATERIAL SUBMITTED SUBSEQUENT TO HEARING

[CLERK'S NOTE.—By direction of the chairman, the following material, not presented during the course of testimony and received subsequent to the hearing, will be included in the hearing record:]

LETTER FROM H. M. PARKER, CAMP VERDE, ARIZ.

STAR ROUTE 2, BOX 749,
Camp Verde, Ariz., April 22, 1982.

U.S. Senator DENNIS DECONCINI,
Washington, D.C.

Subject: IRS hearings.

DEAR SIR: My wife and I receive about $9,000 per year from Savings and Loan accounts which is interest income. This represents our total income at this moment. I have filed for Social Security effective May 5, this year.

Because of this interest income we must file Estimated Taxes.

The IRS sent out preprinted estimated tax vouchers for 1982 along with some very skimpy instructions.

Question: Since we must forecast our taxable income we could use a little help in the instructions which could provide information and answers to questions, such as "Do we or don't we receive the $400 joint return exclusion on our 1982 interest income"? That kind of help from the IRS would be appreciated by me and a lot of other people like me who are just getting our feet wet in the estimated tax quagmire.

I hope this represents the type of input you are asking for.

Sincerely,

H. M. PARKER.

LETTER FROM ROY E. MCALSTER, PHOENIX, ARIZ.

5285 N. RED ROCK DRIVE,
Phoenix, Ariz., June 4, 1982.

Senator DECONCINI,
Senate Appropriations Committee,
Congressional Hearing on IRS.

DEAR SENATOR DECONCINI: The Constitution of the United States of America provides certain congressional powers and duties in Section 8 including: "To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;" Through the years our country has greatly extended the Industrial and Scientific Revolutions as a result of the rights of individuals to own and have patents and trade secret properties. The profits from application of these rights in a nation of vast mineral, timber, water and tillable land resources have been greater than in any other country in the history of the world.

The Internal Revenue Service now operates in ways that jeopardize trade secrets and I would like to bring to your attention personal experiences that remain unresolved and unacceptable. The enclosed pleading and letter from the IRS state the position differences that have been established. I have requested that IRS agents enter into written agreements on what they say . . . vaguely and verbally . . . what they will do in securing trade secrets. They refuse and the IRS policy is to point at laws that are insufficient to deter widespread industrial espionage that now drains (and destroys) countless trade secrets from individuals and from our country.

One solution is to make a suitable provision for securing trade secrets during IRS audits. Another alternative is to adopt and extend the present IRS policy to the result preached in Russia . . . that the State owns everything including the ideas of the citizens.

Sincerely,

ROY E. MCALISTER.

A. BATES BUTLER III
United States Attorney
District of Arizona

MICHAEL A. JOHNS
Assistant United States Attorney
4000 United States Courthouse
230 N. First Avenue
Phoenix, Arizona 85025
Telephone: (602) 2613931

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

UNITED STATES OF AMERICA and ROGER BUTTON, Revenue Agent, of the Internal Revenue Service, Petitioners, v. ROY E. McALISTER, Respondent.	CIV-81-335-PHX-CLH REPLY MEMORANDUM

Petitioners submit the following Memorandum in reply to Responsent's Response to Petition to Enforce IRS Summons.

DATED this 20 day of April, 1981.

A. BATES BUTLER III
United States Attorney
District of Arizona

Michael A. Johns

MICHAEL A. JOHNS
Assistant U.S. Attorney

MEMORANDUM

The respondent, Roy E. McAlister, asserts that the subject IRS summons issued to aid in the determination of the tax liability of Lyle B. and Ruth Barnes, et al., partnership, d.b.a Flint Hills Company, should be enforced, if at all, only if the Revenue Agent signs a nondisclosure agreement concerning an alleged "trade secret". The true value of the alleged "trade secret" is among the subjects of the investigation and is clearly relevant to a determination of correct tax liability, because it "might throw light on the correctness of the taxpayer's return". United States v. Ryan, 455 F.2d 728 (9th Cir. 1971).

In summons enforcement proceedings, the taxpayer bears the burden of showing cause why an otherwise regular and valid summons should not be enforced. United States v. LaSalle National Bank, 437 U.S. 298 (1978). Respondent's conclusory allegation that the summons seeks "trade secrets" is insufficient to carry his burden in the absence of affirmative evidence that a trade secret is involved. Furthermore, the summons seeks information which is clearly not a trade secret, such as cancelled checks and depreciation schedules.

Even if we assume that a "trade secret" is involved, the summons should be enforced. Congress has taken care to insure confidentiality of tax return information such as that sought in the instant case, precluding disclosure, except as provided and required by law. 26 U.S.C. §§ 6103, 7213, 7217 and 18 U.S.C. § 1905. These statutes prohibit disclosure of tax return information, including "trade secrets", except as specifically authorized and except for the purposes specified by law. Where the agency issuing an administrative subpoena has adequate provisions for prohibiting disclosure, the Court need not issue a protective order. See Appeal of FTC Line of Business Report Litigation, 595 F.2d 685, 705-707 (D.C. Cir. 1977), cert. denied, 439 U.S. 958 (1978); Hartley Pen Co. v. United States District Court, 287 F.2d 324 (9th Cir. 1961).

Respondent claims that §§ 6103 and 7213 provide inadequate remedies consisting of criminal sanctions (fine and imprisonment) for violation of confidentiality provisions. However, respondent has ignored the provisions of § 7217 which provide respondent with a civil remedy in United States District Court against the disclosing party for actual and punitive damages, costs and attorneys' fees, and even minimum damages in the event of lack of proof of actual damages. Respondent could obtain no greater protection from a protective order or a written agreement with the Revenue Agent.

Respondent suggests a need for all the names of the IRS employees who may be involved in the subject audit. This request should be denied. First, it presumes that an unlawful disclosure will be made. There is no basis for such a presumption, nor has any proof been tendered which suggests even a likelihood that an

unlawful disclosure would be made. Secondly, the audit is in an early stage and it is impossible to determine at this time who will have to become involved in the future. For example, it is unknown whether a suit will ever be necessary in tax court or United States District Court, or whether proceedings will be necessary in a grand jury. Congress has taken care to insure confidentiality, and it would be an insurmountable task to try to rewrite the United States Code to attempt to provide better protection, particularly where no specific disclosure problem has been pointed out by respondent.

CONCLUSION

Respondent has failed to carry his burden of showing that the summons should not be enforced. A protective order is not necessary in light of the prohibitions and remedies otherwise provided by existing law. An order enforcing the subject IRS summons should be issued by the Court.

DATED this 20 day of April, 1981.

A. BATES BUTLER III
United States Attorney
District of Arizona

Michael A. Johns

MICHAEL A. JOHNS
Assistant U.S. Attorney

Copy of the foregoing hand-delivered
this 20 day of April, 1981, to:

R. E. McAlister
5285 North Red Rock Drive
Phoenix, Arizona 85018

Michael A. Johns

MICHAEL A. JOHNS
Assistant U.S. Attorney

LODGED
APR 21 1981
OFFICE OF THE CLERK
U. S. DISTRICT COURT
DISTRICT OF ARIZONA

FILED
APR 24 1981
W. J. FURSTENAU CLERK
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
BY _____ DEPUTY CLERK

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

UNITED STATES OF AMERICA, and ROGER BUTTON, Revenue Agent, of the Internal Revenue Service, Petitioners, v. ROY E. McALISTER, Respondent.	CIV-81-335-PHX-CLH ORDER ENFORCING IRS SUMMONS

This action came on for hearing before the Court, the Honorable C.L. Hardy, District Judge, presiding, on April 20, 1981, and the issues having been duly considered and a decision duly rendered,

IT IS ORDERED that Respondent Roy E. McAlister shall comply in all respects with the Internal Revenue Service Summons which is the subject of this action within fifteen (15) days of the date of this Order.

DATED: 23 April 1981

Charles L. Hardy
United States District Judge

R. E. McALISTER
5285 N. Red Rock Drive
Phoenix, Arizona 85018

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

UNITED STATES OF AMERICA and ROGER BUTTON, Revenue Agent, of the Internal Revenue Service, Petitioners, vs. ROY E. McALISTER, Respondent.	CASE NO. CIV 81-335 PHX SHOW CAUSE RESPONSE, AND MOTION FOR ORDER TO ENTER INTO CONFIDENTIAL DISCLOSURE AGREEMENT.

The United States of America (and Roger Button) should not and need not take up the time of the Court in this matter.

I.

As established in the Affidavit and Exhibits attached hereto, Mr. Button could have reviewed each and every requested item by simply making a written memorandum of his agreement to keep and maintain the trade secret information contained within the listed documents. Mr. Button most certainly could have reviewed the documents on 28 October 1980, and again on 12 November 1980, in response to the Summons by simply responding to my 4 November, 1980 letter requesting that (he),

> "Please provide a written agreement clearly stating how you and other persons that would come to know trade secrets that I may provide to you will keep and maintain the trade secrets."

Mr. Button refused on 28 October 1980, to commit to writing what he said that he and the Internal Revenue Service would do to protect the trade secrets involved and refused to answer my repeated written request of 4 November 1980.

II.

The Respondent, R. E. McAlister has not refused to comply with Mr. Button's request to receive information from the books, papers, and records of The Flint Hills Company, Inc. but Mr. Button has refused and continues to refuse to provide a written memorandum of how he and other persons of the Internal Revenue Service will keep and maintain the perishable trade secret

information available in the books, records, and papers of The Flint Hills Company, Inc.

III.

The Respondent, The Flint Hills Company participants, and the American public stand to benefit from the hard-work pioneering and considerable risks taken through the private development of economical solutions to significant energy problems during this critical time when we find The United States of America paying for a diminishing supply of imported petroleum at the inflation producing rate of $3,000.00 per second or $94 Billion per year. An important direct result of application of the trade secrets involved in this matter is adoption of renewable fuel supplies from agricultural waste products to replace our present reliance upon fossil oil reserves that were deposited hundreds of million years ago. If Mr. Button succeeds in "constructively publishing" the trade secrets involved through insistant disregard for lawful and proper provisions to keep and maintain the trade secrets, it is all together too possible that the trade secrets will become the objects of third party unjust enrichments or foreign patent monopolies against the interest of the Respondent, The Flint Hills Company, Inc. and The United States of America. The two free world countries most engaged in industrial espionage, Germany and Japan, are also the most difficult to overcome "first to file" patent application priorities regardless of the true inventor. Other foreign countries have strict requirements that no valid patent may be held if any publication or unprotected disclosure of the invention occurred prior to the application for patent prosecution in that country. Again it would be an irreperable harm for Mr. Button and The United States of America to have free access to the subject trade secrets without first providing for the proper protection and keeping of the trade secrets from inadvertent public disclosure or extension to undeserving third parties.

IV.

U. S. Courts have long held that the value of trade secret "know how" represents an important direct and indirect basis for trade, licensing, and production of economic goods.

See: Painton & Co. v. Bourns Inc.
442 F. 2d 216, 223, 225-226
169 U.S.P.Q. 528 (2d Cir (1971)

and

Choisser Research Corp. v. Electronic Vision Corp.
173 U.S.P.Q. 234 (Calif Super Ct. San Diego Co. 1972)

The Courts have also long held that trade secrets can only be legally held when a valid confidential relationship has been established and prevails:

See: Mann v. Tatge Chem Co.,
201 Kan 326, 440 P. 2d 640,646 (1968)

and

Lockridge v. Tweco Prod, Inc.
209 Kan 389, 497 P. 2d 131, 136 (1972)

and

Elcor Chem Corp. v. Agri-Sul, Inc.
S.W. 2d - 178 U.S.P.Q. 552, 557 (Tex Civ App 1973)

and

Kidde Sales Service, Inc. v. Pearson
493 S.W. 2d. 326, 330 (Tex Civ App 1973)

V.

The American inventor has thoroughly shaped the industrial revolution by hard-work and high-risk investment in his ideas. Little has been asked in return except trade secrecy privacy and the opportunity to competitively offer product improvements to a free society that would support ownership and protection of intellectual properties.

The Respondent has consistantly tried to provide the requested books, records, and papers under a proper written memorandum providing for protected confidential disclosure. The Respondent

has shown cause why he should not be compelled to testify --------without trade secret protection--------and produce the documents demanded in the Internal Revenue Service Summons.

VI.

What the Internal Revenue Service has asked the Respondent to do is to constructively risk release of the trade secrets that have taken more than sixteen years of investment and diligent efforts to build. Trade secrets can only be legally held when a valid confidential relationship is established between the owner and those that receive trade secret information. The Internal Revenue Service has neglected and refused to define and establish a confidential relationship with the Respondent for protection of trade secrets. The IRS suggestion that the Respondent sue the Internal Revenue Service in the event that a trade secret becomes misappropriated is a most unworthy remedy. The Respondent would be petitioning or sueing the United States Of America to request that its IRS culprit agent be fined up to $10,000.00 and face possible imprisonment for wrongfully disclosing trade secrets having proven multimillion dollar values so long as trade secrecy is maintained. The remedy in sections 6103 and 7213 of the IRS Code of 1954 is inappropriate. The loss of trade secrets is not recovered by fines or imprisonment. The Respondent would lose the trade secrets, the business based upon the trade secrets, and the time and effort required to prove identity and have an offending IRS agent fined and/or imprisoned, but the trade secrets and the business based upon the trade secrets could not be recovered. The situation is made worse by the present incentive to the would be culprit to spread the blame or increase the number of suspects. Providing many ways that secretaries, janitors, fellow agents, and others could access the trade secret information is an incentive and probable result of the present situation under which the IRS has asked to receive the Respondent's trade secrets. The Respondent does not claim that he can make someone else act honestly but he is requesting documentation of each recipient's name and affiliation, and the dates of trade secret disclosures, that are necessary in

order for the IRS to properly determine tax liability. At least, this will reduce the present incentive for anonymous grapevining of information and creation of nameless numbers of possible culprits. At best, it will provide for proper conservation of trade secrets.

VII.

Wrongful trafficking and sales of stolen trade secrets are difficult to prove and prosecute. Only large industrial corporations are able to afford to expend the large sums that a trade secret civil action requires. Small companies and individuals with trade secrets proportionately, as valuable to them as the secrets of the larger companies, seldom can afford prosecution of trade secret thefts. The incentive to invest in research towards development of valuable trade secrets is further diminished by the fact that the most likely agent to traffic trade secrets is judgment-proof. Justice and fair competition demands that rich and poor enterprises alike be secure in what is, in most areas of emerging technologies, their most valuable form of property.... trade secrets. The best ways to prevent theft of trade secrets is to make those that receive them responsible for their safe keeping, to strictly limit the access to those that have a proven need to know, and to those, that have an incentive to preserve the trade secrets. Attempted prosecution after the loss is not cost effective, is not able to restore secrecy, and often further spot lights the issue to the harm of the victum from whom the trade secrets have been stolen.

VIII.

The agreement attached hereto has been entered into and honored by United States Congressmen, Senators, and numerous other public servants. The agreement has been used since 1964 to secure trade secrets involving use-rights sales by the Respondent to major U. S. Corporations. In one instance, a single corporation provides need-to-know information to more than fifty of its employees that have entered into the agreement. The Internal Revenue Service complaint that they need to have numerous persons review the Respondent's trade secrets is no

excuse for not having each of the persons they select to assist in determination of tax liability enter into the agreement.

IX.

WHEREFORE, R. E. McAlister hereby respectfully prays:

1. That this Court enter an order directing the Internal Revenue Service and each of its agents having access to trade secret information owned by R. E. McAlister, The Flint Hills Company, Inc., and its constituents, to enter into the attached CONFIDENTIAL DISCLOSURE AGREEMENT for the sole purpose of determining income tax liability of The Flint Hills Company, Inc., and its constituents.
2. That in the alternative, the Court enter an order providing for the Internal Revenue Service and the Respondent to each select a representative, the said two representatives will then select a third representative and all three of whom will enter into the attached CONFIDENTIAL DISCLOSURE AGREEMENT for the sole purpose of determining by at least a two out of three vote the tax liability of The Flint Hills Company, Inc., upon receipt of the information that has been requested by Roger B. Button.
3. That this Court grant such other and further relief as it deems just and proper.

DATED this 20th day of April, 1981.

Roy E. McAlister

A F F I D A V I T

UPON MY OATH, I affirm that the following are true and correct statements of fact:

1. I am a registered professional engineer engaged in the business of originating and developing energy related inventions; My Arizona Registration Certificate No. is 10549; It is my duty of confidence to keep and maintain numerous trade secrets on

behalf of myself and clients for whom I serve as a professional engineer;

2. On numerous previous occasions in my career, persons have practiced various forms of industrial espionage including armed burglary to gain access to my trade secrets;

3. I have been particularly distressed by the willful and repeated use of misleading verbal statements of intent by Mr. Henry Tom, Mr. J. E. Schreiber and Mr. Roger Button in order to gain information from me.
On or about 30 December 1980, I visited the local Department of the Treasury Internal Revenue Service Offices at 3443 N. Central Avenue, Phoenix, Arizona, and asked to see Mr. Henry Tom, an examiner. I was directed to Mr. Tom's desk and waited there unattended while inquiry was made about when Mr. Tom might see me. I sat at Mr. Tom's desk for more than 20 minutes and could have accessed several files of other person's unprotected information as I waited to see Mr. Tom's supervisor, Mr. Jack Schreiber. After still another visit to Mr. Tom's unattended desk, Mr. Tom later remarked that it was several days before he found the information that I had left for him on his desk among the unsecured files of other person's information.
On several other visits to the IRS offices, I have found similar circumstances of unprotected files and, therefore, do not believe that Mr. Button, Mr. Tom, or Mr. Schreiber represent themselves in good faith concerning their casual verbal assurances of protection concerning my trade secrets.

4. I made every reasonable effort to have Roger Button enter into a written memorandum providing for the maintenance and keeping of my trade secrets involved in the Partnership known as Flint Hills Company, Inc. including offering to write his words of intent and assurance, offering the attached Confidential Disclosure Agreement, and by the attached letter of 4 November,

1980, requesting that he provide a suitable written agreement;

5. Mr. Roger Button has repeatedly refused to provide a written memorandum of his and the Internal Revenue Service intent and method for keeping and maintaining the trade secrets involved in the information that he has asked to receive from me;
6. I have been ready willing and able to provide the Flint Hills Company's books, records, and papers called for by Mr. Button and have only asked for a proper written agreement to safely secure the valuable trade secrets contained in said books, records, and papers;
7. That irreperable harm would result from the unprotected disclosure of trade secrets contained in the books, records, and papers of The Flint Hills Company, Inc.

R. E. McAlister
5285 N. Red Rock Drive
Phoenix, Arizona 85018

SUBSCRIBED AND AFFIRMED BEFORE ME,

DATED this day 20 of April, 1981.

My Commission Expires:
My Commission Expires Sep 3, 1983

Michele L Ellison
Notary Public:

November 4, 1980
5285 N. Red Rock Dr.
Phoenix, Arizona 85018

Roger B. Button
421-110 I.R.S.
2120 N. Central Ave.
Phoenix, Arizona 85004

Dear Mr. Button:

Regarding your "Summons" per the attached copy, I have the following comments:

1. You could have reviewed the listed documents and records on 28 October 1980 during your visit if you would have entered into a written agreement to keep and maintain my trade secrets.

2. Your comment that you couldn't aid potential competitors or be harmful or injurious to the maintenance of trade secrets because of your training as an I.R.S. Agent is relatively meaningless unless you understand U.S. and foreign patent and trade secret laws and unless you understand the mechanisms and ways that trade secrets are lost.

3. Perhaps the most important trade secrets during the development of an idea are... that a someone is working on a certain significant problem and has.... interesting or encouraging results. This may seem like trivial and innocent information but it is able to trigger or stimulate; market research on the "significance" of the problem, technical brainstorming regarding past and new approaches towards solving the problem, and unfortunately, espionage to get... a little more information from the fellow who developed the "encouraging" results.

4. In most foreign lands, the first to file patent applications have priority over anyone that comes later. It is not fair for the original inventor of a significant solution to a problem to be busy perfecting the solution; testing the solution to be sure EPA, OSHA, DOE,SAE and similar guide lines are met; and investing in the business to cost-effectively produce, package, merchandise, and so on, while alerted competitors are filing foreign patent applications and watching the inventor take the risks and do the pioneering.

Please provide a written agreement clearly stating how you and other persons that would come to know trade secrets that I may provide to you will keep and maintain the trade secrets.

Sincerely,

R. E. McAlister

April 7, 1980

Mr. H. Tom
Revenue Agent
Internal Revenue Service
2120 No. Central Ave.
Phoenix, Arizona 85004

Re: 572-42-7068

Dear Mr. Tom:

In response to your recent request for an extension, I have the following comments:

1. I have carefully reviewed the Federal Tax Return about which you have asked for an extension to consider all pertinent questions. There is no tax consequence possible from further review.

2. Unfortunately your office has taken a very long time to study the relevant court records that answer part of the pertinent questions and you have refused to enter into an agreement to keep trade secrets. I make my living through the generation and use of trade secrets. There is no tax consequence possible, but if you enter into the confidential disclosure agreement I have supplied to you,

I have no problem with an extension for the next 10 or 20 years for your further considerations.

Very truly yours,

R. E. McAlister

May 11, 1980

Ann Lewis
Disclosure Officer
Internal Revenue Service
2120 N. Central Avenue
Phoenix, Arizona 85004

Re: Maintenence of Trade Secrets

Dear Ms. Lewis:

Thank you for your letter of 2 May, 1980 and the various enclosures.

After carefully studying the enclosures, I am considerably more committed to my written and stated position concerning disclosures of trade secret information to your institution.

The penalties for unauthorized disclosures by Federal employees are inadequate compared to the time required to build valuable trade secrets and compared to their value as determined by market worth or costs of development. I am not the least bit interested in funding a firm of attorneys to sue, provide discovery, and win the largest awards indicated by the Federal statutes for losses of trade secrets. It is illogical to conclude, per your implied assurance, that I am protected against losses of trade secrets and their worth, by way of the enclosures of your 2 May, 1980 letter.

Please advise if Mr. Henry Tom has used a voice recording device during discussions with any person regarding my records.

Very truly yours,

R. E. McAlister

May 26, 1979

Mr. H. Tom
Examiner
IRS District Director's Office
Department of the Treasury

Dear Mr. Tom:

You are welcome to come at 8:30 A.M. 6 June 1979 to review the 1977 and 1978 tax returns.

My profession is the development of inventions and trade secrets. Accordingly it will be necessary for you to enter into an agreement that provides for the keeping of these trade secrets and pending patent matters from further disclosure. I have enclosed such an agreement for your consideration.

Please return an executed copy of the confidential disclosure agreement at least three days before the above scheduled date. I will consider our appointment confirmed upon receipt of the executed notarized confidential disclosure agreement.

Very truly yours,

R. E. McAlister

CONFIDENTIAL DISCLOSURE AGREEMENT

In consideration of the opportunity to receive certain confidential technical information owned by Roy E. McAlister, (hereinafter referred to as "McAlister").

Roger B. Button Internal Revenue Service Agent 421-80

hereby agrees to comply with the following provisions relative to all technical information received from McAlister on _____ _____ or received from McAlister thereafter:

1. To use their best efforts to maintain in strictest secrecy and confidence all such technical information and all trade secrets of McAlister (including but not limited to) processes, materials, apparatus, testing methods, tolerances, drawings, inventions, suppliers, customers, development status, performance data, and etc.

2. To refrain from disclosing any such technical information or trade secrets to any person, including present or subsequent business associates.

3. To refrain from using any such technical information or trade secret in their own business, or for their own behalf as in competition with McAlister.

Signature:_____

_____

DATED this _____day of_____, 19_____.

WITNESS:_____

STATEMENT OF W. VAUGHN ELLSWORTH, MESA, ARIZ.

My name is W. Vaughn Ellsworth. My address is 1051 North Grand, Mesa, Arizona 85201. My phone is 833-3340. I am a tax-consultant.

My principal reason for submitting testimony is to urge Congressional adoption of a far-superior method of raising the revenues so indispensable for the operation of our government.

There is nothing improper or illegal with a corporate income tax. Its owners properly agree to submit to government regulation, audit and taxation because the corporation is a "creature of the state," by whose sufferance it exists. Taxation on its income is an indirect, or excise tax.

But I respectfully invite any person to show how the information demanded of individuals on 1040 forms can be "volunteered" under threat of criminal prosecution without a waiver of personal rights.

These include rights and immunities under the 1st, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 13th and 14th Amendments of the Constitution. Passing the income tax amendment--the 16th--did not nullify these other Amendments. In practice, however, as personal income taxes are reported, assessed, audited and collected, most of the rights named are, to some objectionable degree, tampered with, if not trampled on.

Even if the personal income tax were "reformed" by reducing its rate to 1/4 of one percent of one's net--or gross--earnings--and even if IRS were to relax its more agressive procedures, the distasteful elements of oppression would remain.

These include the practice of claiming one guilty of of "avoidance" or "evasion" until one can prove himself not guilty in both civil and criminal categories.

Courts have held that provisions of the income tax laws do not, of themselves, violate constitutional rights. Certainly! That is true! Just to vote the provisions into the Code and then to print them doesn't violate anyone's constitutional rights. But implementing the provisions--enforcing them--making it a crime not to be a witness against oneself and for failing to "volunteer" for our "self-assessment" personal income tax in actual practice--these are the things which make the enforcement of the tax almost impossible of "reform."

In over-simplification, let us say that it costs a trillion dollars a year to run our federal government. Let us say that we consume three trillion gallons of petroleum products, and that we collect an excise tax at the corporate source on either production, refining or interstate distribution--of 33 cents per gallon. So we are running the government on an excise tax.

The tax has been collected from Exxon, Mobile and others who enjoy the government franchise of limited liability and the provisions for raising capital from the public. They, in turn, can add the cost of the tax to their products. The individual, non corporate consumer, need not keep books on the transaction when he purchases unless he wants to for his own use.

Individuals, because of the greater freedom, could begin meaningful competition against the corporations, and until they themselves increased in size to where they too, might need the advantages of limited liability, and choose the burden of corporate income taxation in exchange for corporate advantages.

Freed of the personal income tax, the fear of inquisitional audits and abuse of due process, of arbitrary allowing and disallowing of deductions, of personal hostilities by those in position to inflict them, of traps and snares for the unwary, of lien and levy and the power to "distress and distrain by any means," America would return to great production and prosperity.

The personal, graduated income tax is enunciated in Karl Marx's Communist Manifesto as Plank No. 2, It is designed to topple a nation of private property rights and free enterprise. It is designed to destroy the middle class, which Marx despised with a passion, and which were, to him, the "Bourgeois."

The IRS tries to call those who make objections of unconstitutionality to some of their practices "illegal tax-protestors." I challenge their terminology. I am for taxes--even more than we have now if we really need them. But not under the guise of a personal income tax--which is incompatible with true Liberty. Personal income tax is really "people-control" under the guise of raising revenue. It is not the "protest of taxes," but rather the "protest of inquisitional people-control" which many good Americans are for, but unfortunately are, because of such feeling, branded by the IRS as "illegal tax protestors."

We can completely finance this government as we did for the first some 125 years of its history without a personal income tax--by seignorage in the coining of money, and by indirect, but uniform, excise taxes and duties. Using this method of financing our country, we became the freest, most powerful and prosperous country in history.

Let us keep the corporate income tax. It properly existed before the income tax amendment was passed. It does not violate the Bill of Rights of individuals.

But let us do away with the personal income tax. A flat rate will still leave us with the other obnoxious features of a snooping, centralized, people-controlling government.

If we ever must resort to the direct tax, then let us do it as our wise and inspired Founding Fathers provided--that it be collectable only on the basis of apportionment among the States.

We can completely finance our government without its intruding into our personal lives. When we pay an excise tax on gasoline, tires, phone calls, interstate communication and transportation and other objects of legitimate excise-taxation, we may feel to tell our Congressmen that we think the tax is too high, but by having replaced the personal income tax, we won't have to be complaining about unlawful surveillance, inquisitorial and arbitrary audits and obnoxious intrusion into our privacy.

We will then no longer be threatened with jail for not wanting to "volunteer" to give up our privacy and our right against compelled testimony and not being a witness against ourselves. That's what we always thought the Constitution was designed to protect us from.

We can abolish the personal income tax and finance the government better than ever before--but as it should be financed. We will again be close to enjoying the blessings of Liberty.

Once again, as we return to work, incentive, reward and prosperity, the right to call our lives our own, we will look upon government as our noble benefactor--and not as our ever-harsher police-state.

W. Vaughn Ellsworth
1051 North Grand
Mesa, Arizona 85201
602-833-3340

Under penalties of perjury I state that I have read the foregoing testimony and that it is true and correct to the best of my knowledge, information and belief.

W. Vaughn Ellsworth

LETTER FROM GEORGE R. AND THERESA C. HUEBNER, PHOENIX, ARIZ.

4216 E. Flower
Phoenix, AZ 85018

June 18, 1982

Senator Dennis DeConcini
101 N. 1st Ave. #2850
Phoenix, AZ 85003

Dear Senator DeConcini:

Attached are copies of recent correspondence we've had with IRS. Please enter this in your hearings records as a brief highlight of the fifteen months of harassment we've been subjected to.

If you will refer to item #7 of our June 15, 1982 letter, you'll note the similarity of tactics as reported to you during your hearings in Tucson. At that time you heard how the mere attendance at a meeting was enough to have a group of attornies branded as "illegal tax protestors".

We have always been law abiding tax paying citizens. This unwarrarted and continuous attack on our credability has resulted in heavy expense for us and for the government (we the people). In addition, we have suffered extensive anguish and lost productivity because of this.

You must be aware "that mankind are more disposed to suffer, while evils are sufferable". We would like to add our small cry in the wilderness to the multitudes of voices you must be hearing. The breaking point is near.

Your efforts to control the monster before its too late are much appreciated.

Sincerely yours,

George R. Huebner Theresa C. Huebner

George R. Huebner Theresa C. Huebner

George R. & Theresa C. Huebner
4216 E. Flower
Phoenix, AZ 85018

Person to Contact:
Mike Vernon
Telephone Number:
261-6961
Refer Reply to:
421.111:MLV
Date:
June 7, 1982

Dear Mr. & Mrs. Huebner:

I am expanding the examination of your 1040, U.S. Individual Income Tax Return for 1979, to include the 1980 and 1981 tax years. If you have any information you wish to submit in connection with these years, please call me within two weeks of the above date.

Sincerely,

Michael L. Vernon

Michael L. Vernon
Internal Revenue Agent

4216 E. Flower
Phoenix, Arizona 85018

June 15, 1982

Mr. Michael I. Vernon
Internal Revenue Service
2120 N. Central Ave.
Phoenix, AZ 85004

Dear Mr. Vernon:

Thank you for your letter of June 7, 1982 explaining that you are expanding your examination or our 1979 tax return to include our 1980 and 1981 tax returns. We appreciate the opportunity to provide you with information.

There is a certain amount of information we feel you should have on this matter:

A) Rest assured that we wish to co-operate with you in this matter.

B) There are certain points of confusion that need your attention to help us to provide you with what you need. We will have to have our letter of June 3, 1981 answered. Perhaps you have responded to that letter without our having received your answer. We do have recent documentation that the USPO occassionally does not deliver correctly addressed mail.

C) We will also need answers to the following questions:

1) Is it not somewhat premature for you to be expanding your investigation of our 1979 return to include 1980 and 1981, when your examination of our 1979 return is not yet complete? It is our understanding that once a return has been examined and no deficiency found, that further examination is not required for the next two years. Therefore, please advise us under what law or regulation you have undertaken this expanded examination prior to completing the 1979 examination.

2) Have you acted alone in this decision? If not, please provide us with the name or names of others involved in making the decision.

3) Please be reminded that you (through your U.S.Attorney) chose to vacate the U.S.District Court ORDER requiring us to produce our books and records for 1979. Are we to interpret this expanded examination as an attempt to illegally circumvent the law? If not, what other explanation is there?

4) Are you using this as a harrassing and intimidation technique?

5) Is this expansion of the examination of our 1979 tax return being pursued in an effort to "set an example" to other tax payers who have legitimate questions?

6) Have you taken this course of action as a personal vendetta against us? How else can we interpret this action, since you have classified us as "illegal tax protestors" and have placed us under "criminal investigation"(information learned through an FOIA inquiry)?

7) Does this notification of expanded examination (dated Mon. June 7, 1982) have any relationship to Mr. Huebner's attendance of Senator DeConcini's public hearings into abuses of the IRS (on Fri. June 4th) just one working day prior to your letter? Or is this just a coincidence? Mr. Huebner did recognise one of the IRS personnel in attendance at that hearing, as having also been present at our audit, which you terminated at his direction.

D) You still have not sent us the forms we requested to claim our witness fees and travel expenses. This is the second request for the proper forms required to file this claim. Why do you persist in not providing us with necessary government forms which we have a right to?

As you can see, Mr. Vernon, this TCMP audit proceedure is becoming more and more confusing with each contact you have with us. We just don't understand how we can provide all the information you seek without giving up our Constitutionally guaranteed rights, as well as other protections afforded us by statute. Please help us in clarifying our many points of confusion.

Sincerely yours,

Geo. R. Huebner Theresa C. Huebner

George R. Huebner Theresa C. Huebner